

No. 14201

United States
Court of Appeals
For the Ninth Circuit.

CHET L. PARKER and LOIS M. PARKER,

Appellants,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees,

and

WALTER STEGMANN,

Appellant,

vs.

TITLE AND TRUST COMPANY, a Corporation; PAUL
WINANS, ETHEL WINANS, ROSS M. WINANS,
AUDUBON WINANS and LINNAEOUS WINANS,

Appellees.

Transcript of Record

In Five Volumes

Volume II
(Pages 531 to 1022)

Appeals from the United States District Court for the
District of Oregon

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(Testimony of Chet L. Parker.)

Redirect Examination

By Mr. Strayer:

Q. Do you recall, Mr. Parker, when you were paid out on the Murphy-Nelson tract when the final payment was made? A. I don't remember.

Q. Approximately?

A. I don't know it approximately even. [418]

Q. Well, were you paid out in 1950, or was it 1951?

A. Well, it was a month or two it carried either way. I don't know which time it was.

Q. At the time you were paid out had you entered into other financial transactions with Mr. Stegmann? A. It is possible.

Q. Mr. Parker, I asked you yesterday about that replevin suit. I now have a copy of the papers. Can we have this now marked as an exhibit to show it to Mr. Parker?

The Court: Had you marked that in the pre-trial order as an exhibit?

Mr. Buell: We had a partial copy of it marked as Exhibit 33.

(Discussion off the record.)

(Photostatic copy of Complaint No. 17031 was thereupon marked Plaintiff's Exhibit 76 for Identification.)

Q. (By Mr. Strayer): Will you examine Exhibit 76 for Identification, Mr. Parker, and let me

(Testimony of Chet L. Parker.)

ask you whether that refreshes your recollection regarding the replevin suit? I should say, I think I was in error in referring to Mr. Heider as your attorney. I think the Marsh brothers were your attorneys on that proceeding.

A. What it looks like, I don't know what it is, what you are supposed to know; but anyway it is whatever it is. [419]

Q. Does it come back to you now that you did bring such an action?

A. Well, it is not in my mind, but I don't know how I did, but I know I signed something here, and if that is an action, that is what I did.

Mr. Strayer: We will offer the exhibit in evidence, your Honor.

Mr. Lindsay: Could we take a look at it?

The Court: Show it to Mr. Lindsay.

Mr. Lindsay: We have no objection.

Mr. Jaureguy: I have no objection. I think I have never seen it or heard of it before. I would like to see it, of course.

Mr. Ryan: The same is true of ourselves, but I have no objection.

The Court: You have no objection?

Mr. Ryan: No, I have no objection.

The Court: It may be admitted then.

(Document previously marked Plaintiff's Exhibit 76 for Identification was thereupon received in evidence.)

Mr. Jaureguy: I don't know what it is for. I

(Testimony of Chet L. Parker.)

haven't the slightest idea what they brought it in for, but I do not object.

Mr. Strayer: Well, I thought that you might have objection [420] to stating the purpose. The purpose, of course, is to show the relationship between Mr. Stegmann and Mr. Parker, that he had a sufficient interest in the operation out there that he brought a replevin suit to replevin a truck that Mr. Stegmann was using in performing the Gopher Valley operation.

Mr. Jaureguy: That is not what I understood yesterday. I thought it was in the possession of a garage.

Mr. Strayer: When it was replevied from the garage.

The Court: Go ahead, Mr. Strayer.

Mr. Strayer: We have one more document, your Honor, which has no exhibit number assigned to it, one marked that has not been assigned an exhibit number. May this be marked Exhibit 77?

The Court: What is the nature of the exhibit?

Mr. Strayer: This is the file referring to that loss of the truck and tractor that went off the grade.

(File containing various letters marked Plaintiff's Exhibit 77 for Identification.)

Mr. Jaureguy: Your Honor, this is a big file. I would like to suggest that we do something so that all the attorneys do not have to read this now and do not hold things up.

Mr. Strayer: I have no objection to it.

(Testimony of Chet L. Parker.)

The Court: You go on to the next subject. After they [421] have had an opportunity of examining it, then you may put Mr. Parker on the stand again and ask him the questions.

Mr. Strayer: All right, your Honor.

Q. Do you have your diary before you, Mr. Parker? A. No, I do not.

Q. Exhibit 115. Will you refer to the entry on August 13th and tell me, if you can, when that entry was made with reference to the taking of the option?

A. I don't know when I made this entry.

Q. Will you read it and see if you can tell from the entry? A. Yes, I have read it.

Q. What I am interested in is the language under the heading of August 13th: "Am buying Stegmann's option tonight or tomorrow morning."

A. Are we reading from August 13th, 1951?

Q. Yes, on the second paragraph. "The timber is very good, indeed, so am buying Stegmann's option tonight or tomorrow."

A. Yes, I see it now.

Q. Does that not indicate that you made that entry before you went to The Dalles to take the assignment of the option?

A. Well, I don't know what time of the day I wrote it in. Any time I get a moment, why, I write in my diary.

Q. The last portion of that entry: "Stegmann has paid \$1,000 now and is to pay out of the money I pay him on \$4,000 on election to purchase," does

(Testimony of Chet L. Parker.)

that not indicate that you had [422] an agreement with Mr. Stegmann that he would pay the balance of the \$4,000; that he would stand that phase of it, and that you would pay him \$25,000 for his option?

A. It does not mention about \$25,000 other than \$25,000 for the option.

Q. All right. A. That he wants it, that is.

Q. The Court questioned you about your reliance in title matters. At the time that you took the assignment of option from Mr. Stegmann did you rely to any extent upon anything that Mr. Stegmann said regarding the title to the property?

A. No, I looked that option over very carefully, the thing that he had, as I remember.

Q. Did Mr. Stegmann say anything to you about the title to the property?

A. Well, he possibly did. I don't know that he did or not.

Q. With reference—you were questioned about these checks that were charged to Phillips Construction Company, and I think you said you did not know whether they were all charged to that account or not. It is a fact, is it not, that all of the checks on the Winans transaction, that is, the \$1,000 check and \$4,000 check and the \$95,000 payment, all came out of the Phillips Construction Company account?

A. As I remember of seeing it yesterday, it did. It would almost have to because we didn't have much money in the [423] other account. [424]

LOIS PARKER

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mrs. Parker, how long have you and Mr. Parker been married, approximately?

A. I think since 1936.

Q. During such period of that time as Mr. Parker has been in the timber business have you worked with him in connection with his timber and logging business? A. I helped him, yes.

Q. In connection with the Lost Lake property purchased from the Winans family, do you have any independent recollection of the various important dates involved, such as the date of the assignment of the option and the exercise of the option or signing of a Notice of Election to Purchase and delivery of the deed and payment of the final money?

A. Well, I didn't have anything to do with any of them except the assignment of option and the delivery of the deed.

Q. Well, my question was, do you have any independent recollection of those dates and events, or will it be necessary for you to refer to some memorandum in the course of—

A. I don't have any memorandum.

(Testimony of Lois Parker.)

The Court: You do not have any what? [425]

The Witness: Any memorandum.

The Court: I thought part of the entries of the diary were made by you.

The Witness: I think perhaps.

Mr. Jaureguy: That is correct, but I think on none of the dates except the date of delivery of the deed, I mean, that has been referred to. There are other entries there that have reference to other things. That is my recollection.

Mr. Buell: I will ask the Bailiff to hand to the witness Exhibit 74.

Mrs. Parker, that document, Exhibit 74, which was just handed to you, purports to be an assignment of property involved in this case to Chet Parker and signed by Walter Stegmann, and there it bears the date of August 13th. Can you identify that as to the—or have you ever seen that document before? A. Yes.

Q. Was that prepared on the date which is indicated at the top of it, August 13th?

A. I am sure it was.

Q. That was in The Dalles in Mr. Stegmann's apartment up there, is that correct?

A. I don't know if it was the home or apartment, but where he lived there, yes.

Q. Wherever Mr. Stegmann was staying, that is where it was [426] prepared? A. Yes.

Q. In connection with that assignment, there is recited in it the sum of \$25,000. There was some uncertainty yesterday as to when that \$25,000 by

(Testimony of Lois Parker.)

check was paid to Mr. Stegmann. Do you know anything about that? A. Yes.

Q. When was the check given to Mr. Stegmann?

A. I gave him the check the same evening that we made the option.

Q. The same evening?

A. Yes, this assignment.

Q. Referring to that \$25,000 check, which is Exhibit 40-A, are you familiar with the fact that on that \$25,000 check there appears to be a discrepancy in the date, and that the date appears to be August 14th?

A. No, I don't know anything about that.

Mr. Buell: Could the original check be handed to the witness, please? While the Clerk is looking for that I will pass it and come back to it.

(Discussion off the record.)

Q. (By Mr. Buell): Mrs. Parker, referring still to the evening of August 13th, at the time that you prepared this assignment you say you executed the check to Mr. Stegmann, is that correct?

A. I am quite sure I did.

Q. It was delivered to him there at the same time that the [427] assignment was signed?

A. The same evening, yes.

Q. The same evening. Then that evening do you recall leaving Mr. Stegmann's and then returning to his—where he was, leaving later in the evening, or can you tell us one way or the other about that?

A. It seems to me we may have gone back that

(Testimony of Lois Parker.)

evening to tell him something, but I am not positive.

Q. That would be in connection with the arrangements for Mr. Stegmann to accompany Mr. Kenny to show him the quarter corner, is that correct?

A. Oh, maybe that is the reason.

Q. Did you stay at The Dalles that evening?

A. I am not sure when really we stayed.

Q. During the occasions during this transaction when you stayed at The Dalles did you generally stay at the Oregon Motor Motel up there?

A. We preferred that if they had a vacancy, yes.

Q. When did the fact that Mr. Stegmann had this interest or option on the Winans' property or any property in the Lost Lake area first come to your attention, or do you remember?

A. No, I don't know when I learned it.

Q. Did you see or talk with Mr. Stegmann at any time on August 12th?

A. I don't recall doing so. [428]

Q. Do you recall what time—do you recall going to Hood River on the morning of August 13th?

A. Yes.

Q. Do you recall transacting any business or transacting any business with your husband in Hood River that morning of the 18th?

The Court: Morning of the 13th or the 18th?

Mr. Buell: 13th; I am sorry, your Honor.

The Witness: Well, no, I don't remember.

(Testimony of Lois Parker.)

Q. (By Mr. Buell): Did you go to the title company with Mr. Parker?

A. I can't remember whether I did or not.

Q. In other words, you couldn't say whether he went to the title company in the morning or whether he didn't; is that correct?

A. I couldn't say when he went.

Q. Did you stay in Hood River all the day, the 13th? A. Yes.

Q. What time in the evening did you meet Mr. Parker?

A. Well, I couldn't say positively. We ate dinner, I think, in Hood River.

Q. Did you meet him before or after 5:00 o'clock in the evening? Could you say that?

A. Well, I think it was—I think it was before the stores closed because I wanted him to look at a dress that I liked. [429]

Q. Following your having dinner with Mr. Parker—well, make it following the last time you saw Mr. Stegmann on the evening of August 13th—did you yourself have any telephone conversations or see Mr. Stegmann in person and discuss the Winans' property with him at any time between the 13th and August 18th?

A. Well, I don't know, Mr. Buell.

Q. You don't know whether you did or didn't?

A. No, I don't remember.

Q. Were you present at any time on August 17th when any discussion or arrangements were made between Mr. Parker and Mr. Stegmann rela-

(Testimony of Lois Parker.)

tive to Mr. Parker going to Lost Lake on the 18th?

A. I am not positive about that.

Q. You mean you could have been or you might not, is that correct? A. Yes.

Q. Did you yourself see or talk with Mr. Stegmann on August 18th?

A. I don't remember doing so.

Q. I beg your pardon?

A. I don't remember doing so, but I might have.

Q. Did you see Mr. Stegmann in person at any time between August 18th and August 30th?

A. August 18th and August 30th? [430]

Q. To refresh your memory, August 30th is the date that the policy of purchaser's title insurance was stopped for and paid for in Hood River.

A. Well, I very well might have, but I don't recall any specific incident, I don't think.

Q. That is, you cannot recall seeing him on any specific occasion between those dates, August 13th and August 30th?

A. Well, I can't say that I remember I did, no. I don't believe so.

Q. In other words, you don't recall any specific time of seeing him between those dates?

A. Well, between the 18th and the 30th? I don't even remember if that was the time he was up there surveying or not, but I could very well have seen him during that time.

Q. Can you recall any telephone conversations between yourself and Mr. Stegmann at any time between August 18th and August 30th?

(Testimony of Lois Parker.)

A. Well, just to say that I remember he called me on the 19th or 20th or some day, I do not recall.

Q. I am not trying to get you to confine yourself to a definite date. I am asking you if you can recall any specific telephone conversation with Mr. Stegmann occurring at any time between those dates?

A. Well, I can't recall.

Q. In other words, if you can identify a conversation by that [431] subject matter or what was discussed; that is all we wanted, not necessarily the exact day or time that it occurred.

A. Well, there could have been, but I don't recall any right now.

Q. In other words, you don't recall of any discussion between you and Mr. Stegmann on the telephone concerning this Lost Lake property or the surveying of the reserved area, between August 18th and August 30th?

A. Well, I don't recall any right now, no.

The Court: Are you talking about a conversation with Mrs. Parker personally, or was she present at the time it was taking place?

Mr. Buell: No, I was referring to telephone conversations, your Honor, between the 18th and 30th with Mr. Stegmann.

The Court: Between whom?

Mr. Buell: Between Mrs. Parker and Mr. Stegmann.

The Court: You are not asking whether or not she was present at the time Mr. Stegmann was talking to Mr. Parker over the phone, are you?

(Testimony of Lois Parker.)

Mr. Buell: No.

The Court: All right.

Q. (By Mr. Buell): Mrs. Parker, can you recall being present at any time between August 18th and August 30th when your husband, Mr. Parker, was having a telephone conversation with a person whom he identified to you as Walter Stegmann? Do [432] you understand what I mean?

A. You mean he was having a conversation, and he said, "This is Walter Stegmann calling me," or some such thing?

Q. Either after the call was finished or during the time the telephone call was going on.

A. No, I am afraid I don't remember, Mr. Buell.

Q. Do you recall Mr. Parker and your son, Myron, going up on a survey trip on or about Saturday or Friday, August 31st?

A. I don't recall when they went, but I do know they went because my son came back all wet. He said he had been in the lake.

Q. Did you accompany them to Hood River that day?

A. I don't believe that I did, but I don't remember of it.

Q. Mrs. Parker, from August 31st to September 7th can you recall seeing, yourself, seeing Mr. Stegmann on any particular occasion?

A. I don't know when it was, but my husband had one conversation with him, I think.

Q. Were you present at that conversation?

(Testimony of Lois Parker.)

A. Yes.

Q. What was that conversation about, or do you know?

A. It was about the difficulty, I think, of setting out the reserved area.

Q. Was the conversation that you had in mind, did that occur just shortly before, one or two or three days before [433] the final closing, or was it——

A. I don't remember when it was.

Q. Do you recall whether or not it had anything to do with fixing the time for the final closing of the sale?

A. Well, I don't know whether Mr. Stegmann knew that or not, but my husband and I had considerable discussion about the 10th being the time that we had set for Mr. Winans to finish.

Q. But you cannot recall that that was discussed with Mr. Stegmann on the occasion you have in mind?

A. Well, it very well could have been. My husband might have said, "Hurry up and do this."

Q. But you yourself do not have any recollection of it being discussed, is that correct?

A. You mean having discussed the time of it?

Q. The time.

A. Well, now, I couldn't tell you, but I remember my husband saying to Mr. Stegmann, "Now, be sure that is done on the 10th."

Q. Is this discussion that you have in mind, did that occur on either the day that you came down

(Testimony of Lois Parker.)

from your camping trip at Lost Lake or the day before you went up there?

A. I don't remember, Mr. Buell.

Q. The night that you spent at Lost Lake on the camping trip was a Friday night, was it not?

A. I don't remember that. My husband's diary, I think, should tell you. [434]

Q. What is the first event that you recall yourself of your having anything to do with the closing of this transaction or getting ready to close the sale?

A. Well, the first thing I remember is that my husband was supposed to go do it, and then he made this appointment and I had to go.

Q. When did that occur?

A. Well, since I went two days, it must have been the day before I got the deed because I wasn't ready, and I didn't want to go.

Q. Do you recall making the arrangements to get the \$95,000 cashier's check?

A. Well, I am not just positive about that, but I had to go do it, yes.

Q. Do you recall that was a Sunday?

A. Yes.

Q. Did you know on that Sunday that you were going to close the sale?

A. I don't believe that I knew on Sunday that I had to go do it, no.

Q. Then you went to Hood River on Monday, September 10th, didn't you?

A. I believe that was the day.

(Testimony of Lois Parker.)

Q. Are the events that occurred on that Monday clear in your mind? [435]

A. I think fairly so.

Q. It was the day before that you had gotten the cashier's check, is that not correct?

A. I believe so.

Q. Which would be the 9th. Now, referring specifically to Saturday, September 8th, do you recall seeing Mr. Stegmann on that day?

A. No, I don't recall, I don't think.

Q. Did you yourself talk with him on the telephone that day?

A. Well, I can't say that I didn't, but I don't remember doing so.

Q. You don't remember talking with him that day?

A. No, I don't remember doing so.

Q. Were you present at any telephone conversations between Mr. Parker and Mr. Stegmann on that day?

A. Well, it is possible, but I don't remember.

Q. You don't recall. Did you receive from, or can you recall at all receiving from Mr. Stegmann late in the afternoon of Saturday, September 8th, a rough draft copy of the proposed form of deed?

A. On Saturday?

Q. Yes.

A. I believe I got the deed on Monday.

Q. Well, I am referring to Saturday now.

(Testimony of Lois Parker.)

A. Well, that would be too—no, I don't believe I got the [436] deed on Saturday.

Q. Can you state definitely that Mr. Stegmann did not give you a rough draft copy of the deed on Saturday, September 8th?

A. Well, I believe I could state positively I only had one draft.

Q. All right. Now, approximately what time did you get to Hood River on Monday, September 10th?

A. I don't remember that.

The Court: We had better stop right now.

(Recess taken.)

Q. (By Mr. Buell): Now, we were just getting into what occurred on Monday, September 10th, Mrs. Parker, and I believe you testified that you were not quite sure but you thought that it was either Monday, not earlier than Sunday, that you had learned that you were going up to handle the closing transaction, is that correct?

A. Well, as near as I remember, I think so.

Q. Do you recall whether you had spent Sunday night at Hood River or McMinnville?

A. Well, we could have spent it in Vanucouver, but I don't remember.

Q. No, I didn't mean Hood River; I meant Vancouver or McMinnville. I am sorry. [437]

A. No, I don't remember.

Q. About what time of the day did you arrive in Hood River? A. When, Mr. Buell?

Q. On Monday, September 10th.

(Testimony of Lois Parker.)

A. I don't remember about that.

Q. Was it in the morning?

A. I don't know. I went in to Mr. Abraham's office, I remember, first to see if he would be in later in the day.

Q. But you could not state as to whether you got there in the morning or sometime in the afternoon?

A. Well, I don't believe I could state positively, but I remember I went in there earlier in the afternoon when I went back.

Q. Well, would your best recollection be, then, that you arrived there sometime in the morning possibly shortly before noon?

A. I just don't know, Mr. Buell.

Q. Had Mr. Parker told you what his plans for the day were?

A. Well, as I recall, he was looking at some timber.

Q. Where?

A. Well, I don't know what makes me think Dufur, but I think some up in that direction.

Q. I take it you both went to Hood River in the same car, is that correct?

A. No, I can't remember that we did. [438]

Q. You don't recall, then, whether you last saw your husband at either McMinnville or Vancouver, wherever it was that you stayed, or whether you last saw him in Hood River on September 10th before the closing?

(Testimony of Lois Parker.)

A. No, I don't remember where I saw him last.

Q. Wherever it was that you saw him last, before starting up and handling the closing transaction, had you made any arrangements as to where you would see him next?

A. Well, we surely did. I mean, he never goes away from home and doesn't say he will be back——

Q. What arrangements did you have as to where or when you would meet Mr. Parker following your taking care of the business you were going to handle on Monday?

A. I really think we may have stayed up there somewhere, but I don't know.

Mr. Buell: Mr. Reporter, would you read that answer back?

(Last answer read.)

Q. (By Mr. Buell): Stayed up where?

A. I meant in the Hood River-The Dalles vicinity. We may have stayed there, but I am not positive about that.

Q. That was not my question. My question was: What were the arrangements that you had made with Mr. Parker to meet him in the afternoon or evening of September 10th?

A. Well, I just don't know, Mr. Buell.

Q. Can I take it then from your answer that you started up to Hood River to handle this closing transaction and that you [439] did not know when or where or how you were going to next get in touch with Mr. Parker?

(Testimony of Lois Parker.)

Mr. Jaureguy: I object to that.

The Witness: Why, of course not. He never goes away and does not tell me where he is going to be.

Q. (By Mr. Buell): Where did he tell you he was going to be?

A. I don't remember where he told me. He just simply does not go away from home and not tell me where I will see him another time.

Q. What was the first thing that you did after arriving at Hood River on Monday, the 10th?

A. I couldn't say the first thing I did. I don't remember.

Q. What is the first thing, then, that you did with reference to the Lost Lake timber purchase?

A. Well, I believe the first thing I did was to go into Mr. Abrahams' to see if I could count on him sometime that day.

Q. Did you see Mr. Abrahams when you first went into his office that day?

A. I believe I talked to his office girl.

The Court: Are you talking about Abrahams? I do not think there is a lawyer by that name there. Are you not talking about Kenneth Abraham?

The Witness: That is the name.

Mr. Buell: I probably have fallen into calling him what [440] we used to call him when we went to school, your Honor. I am referring to Kenneth Abraham.

The Witness: Yes.

Q. (By Mr. Buell): Did you find out whether

(Testimony of Lois Parker.)

—or did you make an actual appointment to see Mr. Abraham later in the afternoon?

A. I believe she told me that she was quite sure he would be in.

Q. At any particular time?

A. Well, I don't remember that I set a time. I don't suppose I knew, but it seems like it was later.

Q. Did you give your name to the office girl?

A. Yes, and I told her that my husband had been in before when he bought that log dump site.

Q. Did you tell her what you wanted to see Mr. Abraham about?

A. Well, I may have mentioned it. I am not sure that I did.

Q. Had you either seen or talked with Mr. Stegmann either in person or over the telephone on September 10th before you went into Mr. Abraham's office as you just described?

A. I don't remember, Mr. Buell.

Q. Can you take a minute? What did Mr. Parker tell you that you would have to do in connection with the closing transaction before you left him on the 10th?

A. Well, I don't know whether he mentioned the specific things I was supposed to do or not. [441]

Q. How did you know what you were supposed to do, then?

A. Well, he had the title report, and I had to be sure that Mr. Abraham saw that those were taken off the bargain and sale deed, wanted him to look

(Testimony of Lois Parker.)

at that, and the money had to be paid, and that is all I recall.

Q. Did Mr. Parker give you a title report and tell you to have Mr. Abraham check to see that the exceptions were taken off?

A. No, I think I probably kept the title report.

Q. You had previously gotten the check the day before? A. On Sunday, yes.

Q. But did you have a copy of the deed when you went to Hood River in the morning?

A. On the 10th?

Q. Yes.

A. I don't think I got the deed until the evening of the 10th.

Q. You do not think that you had one, then?

A. Well, I am quite sure I didn't have one.

The Court: How did you know it was a bargain and sale deed when you went in to see Mr. Abraham unless you got a deed prior to the time you went in to see him?

A. Because Mr. Winans had told my husband he was going have a bargain and sale deed.

Q. Mr. Parker had told you that, had he?

A. Yes, I knew that we were to take a bargain and sale deed. [442]

Mr. Jaureguy: That is right in the option itself.

Mr. Lindsay: I beg your pardon. Where is that in the option?

Mr. Jaureguy: Do you want me to read it now or can I show it to you?

Mr. Strayer: It speaks for itself, at any rate.

(Testimony of Lois Parker.)

Mr. Jaureguy: They do not use the expression, "bargain and sale deed." My mistake; that is my mistake.

The Court: Does it say that?

Mr. Jaureguy: No, it does not use the expression, "bargain and sale deed."

The Court: I did not think it did.

Mr. Jaureguy: No, that is my mistake.

Q. (By Mr. Buell): Now, Mrs. Parker, you say you don't believe that you had a copy of the proposed deed or any proposed deed to this property when you went up there, and yet you knew that you were going to have to have the proposed form of deed checked by Mr. Abraham. Where did you think that you were going to get the deed?

A. Well, I had some arrangements with Mr. Stegmann to bring the deed to Mr. Abraham's office.

Q. Did you make that arrangement yourself?

A. I don't remember.

Q. By this time in the transaction—I am referring to the time when you went to Mr. Abraham's office to see if he would [443] be available in the afternoon—had you yourself talked with any member of the Winans family either in person or over the telephone, to your knowledge?

A. One time Mr. Winans was calling, that is, he said it was, and he wanted to speak to my husband, but he didn't speak to me, but I have never met any of the Winans family.

Q. Just that one telephone by a person who iden-

(Testimony of Lois Parker.)

tified himself as Mr. Winans is the only possible telephone call that you know of where you might have been talking to one of them, is that correct?

A. He didn't actually talk to me. I asked the operator who was calling, and I heard him tell her.

Q. Well, then, did you have any idea or arrangement as to when a deed was going to be ready on Monday, the 10th?

A. I don't remember.

Q. Did you see Mr. Stegmann at any time on Monday, September 10th?

A. Well, I very well may have, but I don't remember it.

Q. You cannot recall specifically seeing Mr. Stegmann at any time on that day?

A. Well, I saw him when he brought the deed to Mr. Abraham's office.

Q. That was seeing him, was it not?

A. Yes.

Q. Was that the first time that you saw him that day? [444]

A. Well, that is what I don't remember.

Q. Did you talk with him at any time on September 10th before the time that he brought the deed to Mr. Abraham's office?

A. I might have seen him.

Q. I didn't ask you that. I asked you if you talked with him at any time, either in person or by telephone?

A. Well, I would not have talked to him by telephone because I was just around town. I am

(Testimony of Lois Parker.)

sure I didn't talk to him by telephone, but I may have seen him.

Q. When you went up to Hood River on the 10th, did you know where you could reach Mr. Stegmann on that day if you wanted to?

A. Well, on the 10th?

Q. Yes.

A. Well, I understood, I think, that he was to be working on a deed, I don't know, or I may have called the office and asked.

Q. Did you know or have you any idea as to where he was going to be working on the deed?

A. Oh, I don't know as anyone told me, but Mr. Vawter Parker was making the deed for Mr. Winans. They had set the reserved area out of it.

Q. Then when you went up there you did not know, did you, that Mr. Vawter Parker was the attorney in Hood River who was [445] handling the transaction for the Winans?

A. Why, I am quite sure I knew that. Why, I had to know that, yes.

Q. Did you call at Parker's office at any time on Monday, the 10th, you yourself?

A. I can't remember doing it, Mr. Buell.

Q. Did you go to his office at any time——

A. On the 10th?

Q. Yes.

A. No, the first time I was there was the next day.

Q. What did you do between the time that you

(Testimony of Lois Parker.)

went in to check to see if Mr. Abraham would be available in the day and the time that you went back to see Mr. Abraham?

A. Well, I did shopping, and I had taken a book along to read, I believe. I just waited around.

Q. Was it your plan when you went up there that morning to complete the sale that day, if possible?

A. Oh, I had understood it was to be, yes.

Q. Then about what time was it that you went back to Mr. Abraham's office?

A. Well, I don't remember, but I waited there quite some time.

Q. Can you give any estimate as to the approximate time of the day that you went back to his office?

A. Yes, it was getting late in the evening.

Q. Would you say that it was about 4:00 o'clock or between [446] 4:00 and 5:00?

A. Well, it was getting late because I was worried about him going home and we would not get through.

Q. Would you say it was between 4:00 and 5:00?

A. Well, I think it was.

Q. You had not made any inquiry that you can recall as to the status of this transaction before the time that you went back to see Mr. Abraham sometime between 4:00 and 5:00 o'clock?

A. Well, I couldn't say that I did, but I can't remember doing it. Somehow I knew that it was to be done.

(Testimony of Lois Parker.)

Q. Then when you went back to see Mr. Abraham, what did you do?

A. I believe that he came out and spoke to me, and I said I didn't have the deed and we would have to wait.

Q. Did you tell him anything about the transaction that you wanted to have legal advice on?

A. Well, I believe I must have told him then that we wanted him to look at the deed.

Q. Did you go into his office to discuss it with him, or did you remain out in the outer office?

A. There wasn't anyone in the outer office, and I think I was sitting there by the door when I talked to him, and I didn't go in until I got the deed.

Q. Did you have to wait for some period of time before you finally got the deed?

A. Yes, I think it was a half hour or so. It was late. [447]

Q. Mr. Stegmann brought the deed in in person?

A. Yes, he did; yes.

Q. Then did he stay there with you, or did he leave?

A. Well, I believe he left, but I am just not positive.

Q. What did he tell you when he gave you the deed?

A. Well, he said they finally got through.

Q. And that the description on the copy of the deed that he gave you was satisfactory?

(Testimony of Lois Parker.)

A. Well, I don't know whether he told me that or not.

Q. Satisfactory to Mr. Stegmann?

A. Well, I presumed that is what you meant. I don't know whether to assume or not, but I suppose it was, or he would not have brought it.

Q. Was there anything said between you and Mr. Stegmann as to where you would see him next?

A. I don't recall.

Q. Did he ask you as to where he could find Mr. Parker? A. Well, I don't know.

Q. Then after you got the copy of the deed, what did you do?

A. Mr. Abraham went into his office. I did anyway, and he was sitting there in his chair. He leaned back. I handed him the deed. He was looking at it, and it seemed that it was very late, and he reached over and called Mr. Parker, and he wanted to ask him if it could——

Q. You are referring to Attorney Parker? [448]

A. Yes.

Q. What did he ask Attorney Parker?

A. He said it was so late that evening that would it be all right to close the deal the next morning.

Q. Then did he advise you that it was agreeable with Attorney Parker to close the deal the next morning? A. Well, yes, he told me that.

Q. What did you tell Mr. Abraham you wanted him to do in connection with completing the sale?

A. I just told him I wanted him to complete the sale.

(Testimony of Lois Parker.)

Q. Did you show him the title insurance report that you said you had with you?

A. I don't remember if I showed him that night or not.

Q. Did you tell him who was going to—or, who was going to receive the title to the property, in other words, in whose name the deed was to be made out, on the evening of the 10th?

A. I don't recall that I did.

Q. Did you tell him on the evening of the 10th how much money you were going to pay for the property?

A. I don't remember. I didn't leave the check with him.

Q. Did you advise him on the evening of September 10th as to whether or not you wanted him to make any check at the courthouse with reference to the title?

A. Oh, I believe so, because we arranged to meet earlier than his appointment with Mr. Parker. [449]

Q. What time was the appointment with Mr. Parker and Attorney Parker, do you recall?

A. I think it was 9:30, but I am not positive, or it might have been 9:15.

Q. Had you identified yourself by name to Mr. Abraham, as to your name, I mean?

A. Well, I don't know whether I—I presume the girl told him or else I did the girl. I remember he called me by name the next morning, I remember.

Q. He did call you by name the next morning?

(Testimony of Lois Parker.)

A. Yes, we both said good morning to each other when I arrived.

Q. Did you introduce Mr. Stegmann to Mr. Abraham?

A. Well, I presume I did. I don't remember.

Q. About what time did you leave Mr. Abraham's office on the evening of the 10th?

A. Well, I don't know what time they closed, but it was very near the time and maybe a little past their ordinary closing time.

Q. Then where did you go after you left Mr. Abraham's office?

A. I don't remember, went home wherever we were staying.

Q. Was Mr. Parker there when you got there, wherever it was? A. I don't remember.

Q. You don't remember? A. No. [450]

Q. But you did see Mr. Parker that night, did you? A. Oh, yes; I am sure I did.

(Discussion off the record.)

Mr. Jaureguy: They are looking for a carbon copy of the original deed. I have the original right here.

The Court: Give him the original.

Mr. Jaureguy: He has not asked for it, or I would.

Mr. Buell: I found the exhibit we wanted.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 27.

Mr. Jaureguy: I think I would like the record

(Testimony of Lois Parker.)

to show if it is a fact that that is the same document that I gave you the day before yesterday?

Mr. Buell: That is correct.

Q. Mrs. Parker, can you identify that document as to what it is or whether you have seen it before?

A. Well, I know positively I have seen it before, because I gave it to Mr. Jaureguy not long ago.

Q. Is that a copy of the proposed deed that Mr. Stegmann brought to Mr. Abraham's office on the late afternoon of September 10th?

A. Well, I believe it is, yes. This might be the very copy he brought.

Q. Well, that is what I mean.

A. I mean this carbon one right here might be the one he [451] brought. I don't mean some other copy.

Q. Is that the exact one that Mr. Stegmann brought to Mr. Abraham's office?

A. Well, I think it is because I have had it all the time.

Q. Did you take that and show it to Mr. Parker that night?

A. Well, I think that Mr. Abraham kept it that night.

The Court: I did not hear that.

The Witness: I think Mr. Abraham kept it that night, but I am not positive.

Q. (By Mr. Buell): Did Mr. Stegmann bring more than one copy or just the one?

A. Well, I don't recall more than one, but he could have maybe.

(Testimony of Lois Parker.)

Q. Did you make a copy of the description of the property as it appears on that deed?

A. Oh, gracious, I have never typed this description. This is a long description.

Q. Well, then, when you went back to see Mr. Parker the evening of the 10th you did not have a copy of the description that had been worked out for the reserved area?

A. It seems to me that I had some notes or something on it may be lacking—I just don't know whether it was the whole description, but I had something else. I don't know what it was.

Q. I believe you said that you do not recall where you stayed [452] that night. When did you meet Mr. Abraham the following morning, the 11th?

A. I believe in his office at 9:00 o'clock.

Q. Had you talked with Mr. Stegmann concerning the transaction at all Tuesday, September 11th, before going to see Mr. Abraham?

A. Tuesday, September 11th, no, I don't think so.

Q. When you saw Mr. Abraham in his office, what did you ask him to do then in connection with the sale?

A. Well, we went first to the courthouse where he checked the—I think there were three reservations on the title report, and I think he took those in and checked with a man there to see about that, and the man told him that they were not, not recorded yet, but that they had been released.

Q. You had by that time, then—had you defi-

(Testimony of Lois Parker.)

nitely advised Mr. Abraham that you had a title insurance report on the property?

A. I don't know that I advised him. I may just have given it to him.

Q. Do you remember whether or not you told him that you had a purchaser's policy of title insurance on the property?

A. Well, I don't recall, but I may have, but it wouldn't have had anything to do with those three reservations, I don't think.

Q. Did you ask Mr. Abraham to do any checking other than to [453] see if the three reservations on the title insurance report had been taken care of or——

A. Well, I can't remember. He did whatever was necessary to do, I am sure.

Q. Was there anything else that you were concerned about other than the reservations on the title insurance report?

A. Well, I was concerned about the whole thing. I didn't know how to do it, in the first place; I don't know, I was concerned about it.

Q. Did Mr. Abraham advise you that the reservations that he had checked on had been taken care of or eliminated? A. Yes, I believe he did.

Q. Then what did you do or ask him to do?

A. Well, I didn't ask him to do anything, but he said—I knew that he had to go to Mr. Parker's office, and I waited for him.

Q. Didn't you give him the check?

A. Oh, certainly.

(Testimony of Lois Parker.)

Q. And he had a copy of the deed at that time, didn't he?

A. Well, I can't remember if he had it in his hands, but he probably did.

Q. Didn't you tell him to go over and pay that money and get the deed?

A. Well, no, I didn't tell him. I supposed he knew he had to do that. He talked with Mr. Parker. He knew about it. [454]

Q. Did you tell him whose name to have filled in as the grantee of the deed?

A. Yes, I told him that.

Q. Before he went over?

A. No, I don't know that I told him before he went over. I don't know just when I told him.

Q. Are you unable to testify positively as to whether or not you told Mr. Abraham to fill in Chet L. Parker's name as the grantee before he went to Attorney Parker's office?

A. I don't know if I told him about it before, but I remember when he did put it in, and that was when he returned.

Q. Wasn't there some question about how much of a refund check he should receive?

A. Well, it had to do with so much an acre, but I don't know. I think that the amount must have been decided. I just don't know about that.

Q. In other words, you did not know what amount of check in refund Mr. Abraham was to receive?

A. I don't know, Mr. Buell.

(Testimony of Lois Parker.)

Q. You mean you don't know whether you did or not?

A. I just don't know whether I did or not.

Q. But you did make some mention to Mr. Abraham, didn't you, that there would be some amount of refund that he would return with, together with a deed, didn't you?

A. Well, I surely told him that. I knew it. [455]

Q. Was there any other kind of refund or return check that he was to get in addition to the deed?

A. Well, they had not paid for the revenue stamps.

Q. Who furnished the revenue stamps?

A. We did.

Q. You did? A. Yes.

Q. You had them with you when you came up from Vancouver? A. Yes, I did.

Q. Or wherever you came from?

A. Wherever I came from, yes. I had the revenue stamps, which I gave Mr. Abraham.

Q. Then did you ever have any understanding as to where you would be when he got through with the transaction?

A. Yes, I told him I would wait at the courthouse.

Q. Did you have any particular reason for not accompanying him, though, to Attorney Parker's office?

A. Well, I don't know that I had any particular reason for doing it or not doing it.

(Testimony of Lois Parker.)

Q. How long was Mr. Abraham over there?

A. Well, he was gone a long while.

Q. Did you eventually go over to Attorney Parker's office? A. Yes, I did.

Q. Did you go into his office?

A. Yes, I was in his outer office and his private office. [456]

Q. Were Mr. Abraham and Attorney Parker there?

A. I believe his office girl was in the outer office. She announced me.

Q. But in the inner office there just was Attorney Parker and Mr. Abraham?

A. That's right, Mr. Winans had not arrived.

Q. Were you introduced to Attorney Parker?

A. Yes.

Q. By name?

A. Certainly; Mrs. Chet Parker, not my own name.

Q. Was anything said while you were there in Attorney Parker's office with Mr. Abraham about your being the wife of the man who was purchasing the property from the Winans?

A. Well, I don't know whether it was or not. I think Mr. Parker knew I was concerned about my \$95,000 check.

Q. That was the first occasion that you had ever had to either see or talk with Attorney Parker, isn't that right?

A. Yes, that is the only time I ever saw him.

Q. You said Attorney Parker could see that you

(Testimony of Lois Parker.)

were concerned about your \$95,000 check. Who said that it was your check, or was that said in the course of your discussion with the two attorneys?

A. I think I may have said that they were not very anxious to get my money; that they didn't come on time.

Q. Did either Attorney Abraham or Parker say anything in [457] reply to that?

A. I think Mr. Parker said it was quite usual for people to be late.

Q. Did you see the deed; that is, the actual executed deed, while you were there in Attorney Parker's office?

A. Well, it may have been on his desk, but no one showed it to me.

Q. Did you know whether or not the deed had been signed by that time?

A. I thought it had not been, but I don't know where I got that idea.

Q. You say you thought it had not been?

A. It seems to me on the evening that maybe Mr. Abraham told me that Miss Winans had not signed the deed, but I am not sure. Somehow it seemed like it was not signed.

Q. Was Mr. Stegmann's name mentioned while you were there in Attorney Parker's office?

A. Yes, I think it was.

Q. Who mentioned it?

A. I think Mr. Parker said that Mr. Stegmann had a terrible time with the reserved area description.

(Testimony of Lois Parker.)

Mr. Lindsay: What was that answer?

(Answer read.)

Q. (By Mr. Buell): Did Attorney Parker say anything else with reference to Mr. Stegmann?

A. Well, he may have. I don't just recall. [458]

Q. Did you make any—or say anything about Mr. Stegmann?

A. Why, I very well might have. I don't know, Mr. Buell. Do you mean about anything?

Q. Yes.

A. Well, I don't recall what I said, if anything. I was very annoyed that I had to wait all that time.

The Court: What time was this?

The Witness: This was after 10:00 o'clock, your Honor.

The Court: After 10:00?

The Witness: Well, I think it was, because I waited quite a long time.

Q. (By Mr. Buell): Did you make any reference to Mr. Stegmann as being the prospective purchaser of the Winans' property?

A. Well, I can't recall ever making a statement like that.

Q. Well, I would think that you would be able to either recall it or be able to state that you did not make any such statement; can you?

A. Well, he was not a prospective purchaser so I am quite positive that I did not say that he was because I don't tell people things like that.

(Testimony of Lois Parker.)

Q. Did anybody else come into the inner office, as you referred to it, while you were still there with Attorney Abraham and Attorney Parker?

A. Well, I believe the door was closed, but I am not positive, and I couldn't say whether they did or not. [459]

Q. Did anybody come into the office in which you were sitting with Attorneys Abraham and Parker?

A. No, I am sure there was no one there but Mr. Parker and Mr. Abraham and myself.

Q. Then did you leave before the deal was finally completed?

A. Yes, I left. I think Mr. Winans had phoned. Perhaps Mr. Parker had told him, and he said that he would be along, and so I left then.

Q. Did you have any particular reason for leaving?

A. Well, I can't recall whether I did or not.

Q. Nobody suggested that you leave, did they?

A. Well, I don't think Mr. Parker asked me to leave. He surely didn't.

Q. Then after you left did you ever return to Attorney Parker's office?

A. I don't believe I have ever been back there.

Q. Never talked to Attorney Parker?

A. I have never spoken to him since.

Q. How long was it after you left before you next saw Mr. Abraham?

A. Well, he came before very long, it seems to me.

(Testimony of Lois Parker.)

Q. What did he have with him?

A. He had the deed with him.

Q. Was the grantee's name filled in as yet?

A. No, because he did that when he came back to the courthouse. [460]

Q. Did he have the two checks with him, or was it one check?

A. No, I think it was two checks.

Q. In what amounts, do you remember?

A. Yes, I remember one of them, and I—one was \$4,750.

Q. And the other one was a smaller amount for the revenue stamps?

A. Yes, it was a small amount.

Q. Was there any discussion while you were there in Attorney Parker's office as to how much the refund check for the two or three additional acres was going to be?

A. Well, I don't know whether it was mentioned or not.

Q. Was there any discussion as to whose check it was going to be?

A. As to whose check it was—I just don't understand your question.

Q. Well, I am sorry. That is probably confusing. Was there any discussion as to whose bank account the check for the reserved area was going to be drawn on?

A. I don't believe I knew anything about that.

Q. When you left Attorney Parker's office, did you know that the refund check was going to be

(Testimony of Lois Parker.)

on Attorney Parker's bank account, one of his checks?

A. The only thing I remember about the check that I thought was odd, or checks, was when I finally saw that they were [461] going to Mr. Abraham instead of to my husband, and I thought that was an odd thing.

Q. How would Attorney Parker know to have them made out to your husband?

A. Well, I don't know. Couldn't Mr. Winans tell him or someone tell him, Mr. Abraham? I just don't know how he would know.

Q. Now then, when Mr. Abraham was over there in Attorney Parker's office, he knew that your husband was to be the grantee; is that correct?

A. No, I am not positive he knew he was to be the grantee, but he definitely knew that Mr. and Mrs. Parker were buying the property so he would have known some of us got the check.

Q. Had you had any discussion with Mr. Abraham concerning the advisability of taking the property in your name or your husband's or your son's, or one of your assumed business names?

A. I don't remember whether I did or not.

The Court: Whom was that conversation with?

Mr. Buell: Attorney Abraham.

Q. When Mr. Abraham returned with the deed and the two checks, did he tell you anything about any conversation that he might have had with Paul Winans in Attorney Parker's office?

A. No; when he returned, we put the deed on

(Testimony of Lois Parker.)

record and wrote his name in and put the stamps on, and then we went to the bank, [462] I believe.

The Court: Then you went where?

The Witness: To the bank.

The Court: The bank?

The Witness: Yes.

Q. (By Mr. Buell): Did Mr. Abraham tell you anything about Paul Winans having mentioned a defect in the title to the property which you were purchasing or had just purchased?

A. He never did mention a defect at all. He mentioned a technicality.

Q. What did he state to you in connection with a technicality?

A. When we were finally back at his office and I had paid him he said that he felt that he should mention to me that Mr. Winans had said there was a technicality in the title but that he didn't think it was important.

Q. When you say "he didn't think it was important," are you stating that Mr. Abraham said that Paul Winans said that he, Paul Winans, didn't think it was important, or that Attorney Abraham didn't think it was important?

A. Attorney Abraham so advised me, that he thought it was a very small thing. He paid very little attention to it.

Q. When you say "a small thing," did he specify at all as to what the technicality was or what it was concerned with? A. No, he didn't.

(Testimony of Lois Parker.)

Q. You say that Mr. Abraham did not tell you of that until [463] after you had paid him for his services in connection with the matter?

A. That's right; I actually paid the office girl, I believe. I may have paid him at the outer office.

Q. And he did not tell you about the technicality over at the courthouse? A. No.

Q. Before you recorded the deed?

A. No, he didn't.

Q. Then were you at all concerned or worried about the technicality, as you described it, when you left Attorney Abraham's office?

A. I don't believe so.

Q. What did you do after you left his office? What did you do next?

A. I think I went back where we were staying.

Q. Do you think that was in Hood River?

A. Well, I don't know. It does not seem like it was, but I am not sure.

Mr. Jaureguy: Perhaps your notes in the diary state where it is.

Mr. Buell: That is right. I believe—I wonder if the Clerk——

The Court: Is that in her handwriting?

Mr. Buell: A portion of the entry on August 18th was in [464] her handwriting, your Honor. No, I mean September 11th.

The Court: Where is she supposed to have been staying?

Mr. Jaureguy: She said, "Staying at Oregon Motor Hotel tonight."

(Testimony of Lois Parker.)

The Court: All right. Does that refresh your memory?

The Witness: It does seem that I drove back to The Dalles, but I am not positive about it. I think so, though.

Mr. Jaureguy: We have her own handwriting here, your Honor.

The Court: Proceed.

Q. (By Mr. Buell): If you put that down in your own handwriting in the diary, that would be correct, would it not?

A. I am sure it would be, Mr. Buell.

Q. That entry is on——

The Court: She has already testified it would be correct. Why go into it any more?

Mr. Buell: All right, then, your Honor, I will pass it. As I recall, the portion of that entry that was in Mr. Parker's handwriting and the portion in hers was described yesterday, was it not?

Mr. Jaureguy: I am not sure of that.

The Court: Let us go on.

Mr. Jaureguy: It was on one of the dates, but I am not sure about this date.

Q. (By Mr. Buell): Mrs. Parker, had you stopped at the title [465] company before driving back to The Dalles that morning?

A. I don't remember. This was on the 11th?

Q. Yes. A. Well, I don't remember.

Q. You don't recall advising them that the deed had been placed of record and that you would like to get your title insurance as soon as possible?

(Testimony of Lois Parker.)

A. I don't believe that I went to the title company, but I don't know.

Mr. Jaureguy: Pardon the interruption, counsel, in the middle of a question, but referring to "before driving to The Dalles," I didn't recall any of that.

Mr. Buell: I think yesterday she recalled driving back to The Dalles that morning.

The Witness: I beg your pardon. When did I come back?

Mr. Buell: On the morning of the 11th after the deed——

The Witness: I am confused about the thing. I went back from there after it was done.

Q. (By Mr. Buell): When do you first, if at any time, recall going in to the title company following the time the deed was placed of record?

A. I recall going in to pick up the owner's policy.

Q. That is the only time that you can specifically recall? A. I believe it is.

Q. At any time did you advise the title company concerning [466] what Mr. Abraham had told you about the technicality in the title?

A. No, I don't believe I did.

Q. Mrs. Parker, referring to the bookkeeping transactions of yourself and Mr. Parker, do you handle almost all of the bookkeeping for the two of you?

A. Well, he pays the check. I mean, he pays the bills quite often if I don't do it.

Q. In other words, you both write checks on

(Testimony of Lois Parker.)

your account. We understand that. A. Yes.

Q. With regard to keeping the record of expenditures, what they were for and for the purpose of supplying your accountant with information to prepare your tax statements, is that done by you or Mr. Parker?

A. Well, some of it he does. He makes notations once in a while if I am not there, nothing else.

Q. Now, you said, to shorten this up, as I recall in your deposition or from your deposition, don't you keep your accounting records pretty generally in the following manner, by keeping your deposit slips of all deposits into your bank account and keeping and segregating the checks that were paid and returned to you as to what the particular type of expense was for, and keeping your bank statements; isn't that about all of the accounting or bookkeeping information that you keep? [467]

A. Yes, that is just about all we have.

Q. Insofar as the stubs on your checkbook are concerned, you do not attempt to keep a complete record of all expenditures on the check stubs?

A. No.

Q. You do not make any attempt from month to month to balance your bank statements when they are returned to you?

A. Oh, I always check my bank statements.

Q. Would the Clerk hand the witness Exhibits 42 and 43, please.

(Exhibits were given to the witness.)

(Testimony of Lois Parker.)

Q. Referring first to Exhibit 42 Mrs. Parker——

A. Yes.

Q. That is the bank statement for the Phillips Construction Company segregated for August and September, 1951. What is Exhibit 43?

A. Well, that is the remainder of the account.

Q. The personal account?

A. Well, they were both personal.

Q. Well, is it not true that Exhibit 43 is the bank statement for Chet or Lois Parker, care of Oscar Parker, Route 3, McMinnville, Oregon?

A. Well, if you will notice, the other one says "Phillips Construction Company, Lois or Chet Parker, Route 3, McMinnville, Oregon."

Q. Yes; it speaks for itself. [468]

A. Yes, they are both personal accounts.

Q. 42 and 43, they are both personal accounts?

A. Yes, that is right.

Q. But those statements cover the months of August and September, 1951, for the Phillips Construction Company account and for the Chet or Lois Parker account, do they not? A. That is right.

Q. Now, as you state those are both personal accounts, would you please advise us, if you can, as to how or what arrangement, if any, you had with the bank so that the bank would know what check to charge against which account?

A. I don't think I had an arrangement with them about it.

Q. There was no arrangement that you know of?

A. Well, I don't remember any arrangement.

(Testimony of Lois Parker.)

If I didn't have enough money in one, I think they would take it out of the other one.

Q. For the purpose of trying to give us an idea of just how that worked, take for an example if you had \$15,000 in each account and drew one of these checks signed by either you or your husband, how would the bank know which account to charge it against?

A. I don't know. I don't know if that ever happened.

Q. Referring to those statements—may I approach the witness?

The Court: What is the significance of this testimony? What difference does it make if they paid it out of one [469] account rather than the other?

Mr. Buell: It goes, in the first place, to the question of the reason for separate accounts and withdrawals from one to place in the other, and it will be eventually tied down to the distribution of proceeds of this, the purchase price of the property.

The Court: Both accounts are personal accounts, according to the testimony, so what difference does it make if money is taken out of one account and put back in another account? Are you referring to the \$25,000 check?

Mr. Buell: Well, I am getting down to the hundred-thousand dollar deposit first of all, your Honor.

The Court: Was that taken out of her personal account and put in the Phillips Construction Account?

Mr. Buell: It was.

(Testimony of Lois Parker.)

The Court: It seems to me it is much ado about nothing, but go ahead.

Q. (By Mr. Buell): Referring to Exhibit 42, Mrs. Parker, on the second page where the statement shows an August 31, 1951, balance of \$132,000-some odd dollars, and from Exhibit on the Chet or Lois Parker account the statement showing a balance of August 31, 1951, of nineteen hundred-odd dollars, are you unable to give any explanation as to how a bank would know which account to charge to a hundred-dollar check against when it came in? [470]

A. Well, they probably have a perfectly simple way of doing it, but I don't know how they do it.

Q. Then, referring to Exhibit No. 42, on August 9, 1951, it shows a deposit in the account of \$100,000. Can you find that on the exhibit?

A. Yes.

Q. Referring to Exhibit 43 of the August statement, does that not show a debit of \$100,000?

A. Yes.

Q. Was that change of \$100,000 from one account to the other on August 9th made at the request of yourself, at the specific request of yourself?

A. Why, I am sure it was. No one had any right to change my money or do anything with it.

Q. You have stated that this is a personal account, that they were both personal accounts?

A. They are personal to my husband and myself, yes.

Q. Do you have any recollection of calling the bank and requesting them to take a hundred thou-

(Testimony of Lois Parker.)

sand dollars out of one account and putting it in the other?

A. I didn't call them and tell them that, no.

Q. Did you do it by check?

A. I had to give them a check, I think, to transfer, but that I don't know whether I did or not.

Q. Was that in contemplation of the purchase of the Winans [471] property?

A. No, that—this hundred thousand dollars has to do with a construction thing that we were thinking of; and since I was going to have more money in this other account and I had enough to take a hundred thousand dollars and put over for this thing, that is the reason I took the hundred thousand dollars. Now, if I had had \$156,000 in the personal account, to begin with, I would have probably put \$150,000 in there, but I didn't have that much. I only had a hundred to spare.

Q. Referring to the bank statement, on the deposit entries you have drawn a circle around a number of the deposits and put a notation of one kind or another in your handwriting off to the side, is that right?

A. Well, it is usually a little arrow to point at which one this is supposed to refer to.

Q. And that information as noted down there is a record upon which to prepare your income tax returns, isn't it?

A. Well, it refers to that so that I can tell what a deposit was for.

(Testimony of Lois Parker.)

Mr. Buell: Would the Clerk please hand to the witness Exhibits 50, 51, 52, 53 and 54.

(Photostats, individual income tax returns for the years 1950, 1949, 1948, 1947 and application for tentative carry-back adjustment, were thereupon marked [472] Exhibits 50, 51, 52, 53 and 54, respectively, for identification.)

Q. (By Mr. Buell): Mrs. Parker, referring to the exhibits which were just handed you, you will find the numbers stamped on the back of the last page of each exhibit where they can be seen. Exhibit 50 is a copy of the 1950 income tax return of yourself and Mr. Parker, is it not? A. Yes.

Q. No. 51 is a copy of the 1949 return of yourself and Mr. Parker, is it not?

A. That is right.

Q. No. 52 is a copy of the 1948 return?

A. Yes. Well, let's see, 1948, calendar year, and it says 85Y—54, I am sorry. Is that what you meant, the number?

Q. 54? A. Yes, for '48?

Q. '48? A. Yes.

Q. That, however, is an Application for Carry-back Adjustment on your account.

A. Oh, I am sorry, yes. Well, now, which one is it you want?

Q. 52 is the return for 1948.

A. This goes with this (indicating documents)?

Q. That is correct, that carry-back adjustment goes with that.

(Testimony of Lois Parker.)

A. Yes, and this is '47, A53. [473]

Q. Now, you advised us, did you not, in your deposition, Mrs. Parker, that the best record of the year-to-year or the best record of the logging equipment and trucks and the like that you and Mr. Parker owned from year to year would be the schedules attached to your income tax returns?

A. That would be the best, but I found an error in those years, and so I could not say they are all just right, but I think they are pretty good.

Q. And that that is the principal record that you keep of those items, is it not?

A. Well, this is the one that I give to the auditor, and I have to pick it up from here, there and somewhere else. I don't keep this record myself. I didn't have these until you asked for them.

Q. But the record is prepared by your accountant, Mr. Rich, from the information which you furnish them, and then he returns it to you, and you check it before signing it and filing it; is that not correct?

A. This year I am sorry to tell you I did not check it because I didn't have time, but usually that is the case. I try to do that.

Q. Didn't you also tell us in your deposition that that would be the best record of the dates of the acquisition and sale of various timber properties that you and Mr. Parker had acquired?

A. Well, yes, I am sure that would be the best one, Mr. Buell. [474]

Mr. Buell: Would the Clerk please hand Mrs.

(Testimony of Lois Parker.)

Parker Exhibits 35 and 36 which are the \$10,000 and the \$22,000—photostatic copies of the two notes.

(Documents were presented to the witness.)

Q. Mrs. Parker, would you please refer to Exhibit 35 which is a photostatic copy of the \$22,000 note and the mortgage attached to it. A. Yes.

Q. As I understand it, the originals of those two documents were prepared by you on one of your typewriters when the loan and agreement were made? A. That is right.

Q. Do you recall, or had you been a party to, or listened in on any conversations or discussions between Mr. Parker and Mr. Stegmann prior to November 20, 1950, concerning the proposed \$22,000 loan?

A. Well, I knew about it, but I can't say that I was there or that I heard what they said even. I think my husband told me about it.

Q. You don't recall Mr. Parker having ever mentioned to you prior to November 20, 1950, that he was going to make a \$22,000 loan to Mr. Stegmann, do you?

A. Well, I think I do, but I am not sure about it.

Q. When is the first time that you recall Mr. Parker making such a suggestion to you, that he was contemplating such a [475] loan?

A. I don't remember, Mr. Buell.

Q. But you think that he did mention it to you before the date of the loan?

A. Well, I am sure we talked about it because

(Testimony of Lois Parker.)

it had to do with actually what we considered my security money.

Q. What you consider your security money?

A. Well, it is a different fund. It is what we keep in cash and so, therefore, I know we talked about it because I thought we should have some interest or something on it.

Q. When you discussed the fact that you thought you should have some interest on it, Mr. Stegmann's name was brought up as being a person who might borrow some of the money, is that correct?

A. No, not the first time we talked about it, I am sure it wasn't.

Q. Well, now, as I understand it, at the time the loan was made and the note and the mortgage signed you had the \$22,000 in the drawer in your home?

A. I had more than \$22,000.

Q. But that was in currency?

A. Yes, in currency.

Q. And it had been there for some time, had it?

A. Yes, I had it quite some time.

Q. You had not withdrawn it from your safe deposit box for [476] the purpose of providing the funds for this loan to Mr. Stegmann?

A. Well, I don't recall about that, what I had it for, but I had it.

Q. But you don't recall whether or not you had Mr. Stegmann's loan in mind when you took it from the bank?

A. I could have had, but I don't know whether

(Testimony of Lois Parker.)

I did or not. I don't usually take it out and keep it, but sometimes I do.

Q. Well, did you have any other specific loan or use for the money in your mind when you took it out of the bank?

A. I don't know, Mr. Buell.

Q. Referring to the bank, was that the only—your safe deposit box was in The First National in McMinnville?

A. The one we are referring to was, yes.

Q. At that time did you have any other safe deposit box? A. No.

Q. Have you ever had any other safe deposit box since that time? A. Yes.

Q. Where?

A. I had one at the Bank of California.

Q. When did you first open that or obtain that safe deposit box?

A. I don't remember the date, but it was after we moved to our Clackamas home. [477]

The Court: After you moved where?

The Witness: To our new home on the Clackamas River.

Q. (By Mr. Buell): That was in about February, 1951, was it? A. Yes, it was.

Q. Would you please refer to the back of the promissory note that is attached to that exhibit?

A. No. 35?

Q. Yes; and are those, all of those figures in handwriting, in your handwriting? A. Yes.

Q. I wonder if you will, Mrs. Parker, please explain what those entries are?

(Testimony of Lois Parker.)

A. Well, the first entry, April 20, 1951, is \$1500 which I loaned to Mr. Stegmann. Do you wish me to go just right down the line?

Q. Yes.

A. And the next one put underneath is \$22,000, and then I drew a line, and that makes \$23,500. I have written down May, over here to the left-hand side. I don't know if that means the interest, \$140, in May, and then it says "Principal, \$2,300," and I drew another line, and that makes \$21,200.

Q. First of all, Mrs. Parker, referring to the one entry, "Interest, \$140," what was that placed on that particular note for?

A. On this note? [478]

Q. Yes.

A. Well, this was just the general indebtedness, and I suppose if he brought some money back I put it on there. I don't know.

Q. Well, does that represent interest that you collected from Mr. Stegmann?

A. Well, it is interest that I collected from him on something, yes.

Q. Is it your testimony that that interest was collected from Mr. Stegmann in May?

A. Well, I don't know, Mr. Buell. This date is not very good. I just really don't know what that was on there for.

Q. Well, does not the word "May" appear there?

A. Yes, it says May, but the May is opposite the \$22,000, so I don't know just what that refers to.

(Testimony of Lois Parker.)

Q. Seeing it there does not refresh your recollection at all?

A. No, it really does not. I figured on something and jotted these things down, and I just really don't know.

Q. Can you associate May with the \$2300 entry that you have noted just below the \$23,500?

A. Well, I don't know; maybe he paid it back in May or something, and I figured the interest on it; but I just don't know really what that means.

Q. Paid what back in May?

A. Well, he paid \$2300 it looks like because it says \$2300, [479] and I jotted the whole principal down, maybe all of it, or something; I don't know just what we did.

Q. Do I take it that you have no recollection of Mr. Stegmann having paid you the \$2300?

A. No, I can't remember when he came and paid me, but I am sure that he paid me this amount sometime.

Q. Well, then, can you recall any of the circumstances under which it was paid?

A. No, I couldn't. I may just have made a note and then finally got these things and written on them. I just don't know, Mr. Buell.

Q. I don't suppose you could testify, then, as to whether it was paid in cash or by check?

A. I can't remember getting cash or a check, either one, from him, but I probably got one or the other, surely. He would have had to pay me.

Q. With regard to the payment, you don't know

(Testimony of Lois Parker.)

whether that occurred in May or not, is that correct?

A. Well, I don't know. I don't know what—I just don't know what May is on there for. There is no other date.

Q. Would you explain, please, how the figure \$140 interest was arrived at?

A. Well, I think it was interest on the \$22,000 that I wanted, but I am not positive about it. It seems to me it was.

Q. From when until when?

A. Well, I think this was in November some-time until this May [480] time or this April time—May time, I think, but I just don't know. It may have included some of that interest maybe.

Q. What is the next entry below that? Is that the last?

A. No. Then after all those little connected business, well, then, there is one that says "September 20—'51, on principal \$19,973.75," and then you draw a line under that, and you subtract, apparently, and so that is \$1,126.25.

Q. Those are also your entries, were they?

A. Yes.

Q. Those were made, I take it, when Mr. Stegmann returned the check, the \$25,000 check?

A. Yes, that's right; that had to apply on that.

Q. Will you refer to the other note and mortgage for the moment, please. That \$10,000 note was the note given in connection with that loan commitment which Mr. Stegmann and Mr. Parker worked out, is that correct?

A. Yes.

(Testimony of Lois Parker.)

Q. And are there any entries on the back of that note? A. Oh, yes.

Q. On the back of the agreement, is it?

A. Yes.

Q. On the back of the agreement?

A. This looks awfully peculiar. It looks like it is printed backwards.

Q. Do you see the next page? [481]

A. Is that all right? You want me to read this part up here?

Q. Yes, the handwritten entries.

A. Yes, it says three checks, \$2,850 in by May 14, and interest \$150, and that makes \$3,000. Oh, it says, "Credit, \$2,300 balance of check for \$22,000 and \$140 interest to——" I suppose I put these little marks; I suppose it means the balance or something having to do with it.

Q. Doesn't this entry read: "Credit, \$2,300 balance of check for \$22,000,"—then can you read what that last is?

A. Those are just three oughts, I think.

Q. Oh, that is \$22,000? A. Yes.

Q. And then the figure \$140 and interest to \$22,000?

A. Yes, and then two checks, \$5,000 and \$26.25.

Q. All right. Now, referring to the notation \$5,000, two checks—or interest—\$5,625—or \$26.25, did you compute that interest?

A. Would you please tell me that again? Which checks are you referring to?

(Testimony of Lois Parker.)

Q. The bottom entry that refers to two checks, \$5,000, interest, \$26.25.

A. Oh, I suppose, probably.

Q. You say you suppose you did?

A. Well, I don't think anybody else did. This is my writing.

Q. When was that figure computed? [482]

A. When was it computed?

Q. Yes.

A. Well, I think it was computed at the time he paid us this \$25,000 check back.

Q. Then what is the answer above that, the \$2300 credit or balance of check \$22,000?

A. Well, I think what this is, but I am not positive about it, I don't ever recall getting cash or check either from Mr. Stegmann, and I think that he has brought me a check, and I have credited this to the \$2,850. These checks that he wrote, you understand, on this \$10,000, balance of whatever he brought me, I think went on his \$22,000 note, I think. The way it is, I am not positive. I have just really forgotten.

Q. Well, then, is it correct that that entry indicates that Mr. Stegmann brought you in a check or cash in a sufficient amount to repay the \$2,850 advanced for his purchase of the Johnson property, plus \$150 interest, and leaving a balance of \$2,300 which you could credit against the principal due on the \$22,000 check?

A. Well, it could be, Mr. Buell. I just don't know how this is exactly.

(Testimony of Lois Parker.)

Q. But, in other words, you can't—you still cannot specifically say that that was or was not the situation?

A. No, I don't remember at all. [483]

Q. Well, do you remember Mr. Stegmann having advised you of what his source of funds was with which he made that payment?

A. No, I can't remember how he paid me. I just don't know.

Q. Mrs. Parker, was it before or after May, 1951, that you acquired the Wrist timber and then apparently disposed of it to the McCormick Lumber Company?

A. I don't remember when it was, Mr. Buell.

Q. Mrs. Parker, on your 1951 income tax return, Exhibit No. 49, it indicates that the Wrist timber was acquired——

A. Just a moment, Mr. Buell. Did you say Exhibit 49?

Q. 49. A. The '49 one?

Q. No, it is the '51 return.

A. Oh, just a minute. Where do you wish me to look, please?

Q. I believe the first page of the return.

A. It says "Schedule of Depreciation."

Q. No, "Sales of Capital Assets."

A. Oh, here is this check, this \$25,000 and this smaller one. Yes, now, this is sales of capital assets, 1951.

Q. There is an entry there that the Wrist

(Testimony of Lois Parker.)

timber was acquired April 19th, 1951, and sold April 25th, 1951; correct?

A. Yes, that is what it says.

Q. That was the timber that you had acquired upon information furnished you and Mr. Parker by Mr. Stegmann, is that right?

A. What was the question again, please? [484]

Q. Didn't you acquire or locate and subsequently purchase that timber upon the advice of Mr. Stegmann who had first located it?

A. No, I didn't purchase it on his advice. We paid him a finder's fee for it, I think.

Q. He had located the timber that you subsequently purchased? A. That is right, yes.

Q. When did you pay him a finder's fee that you refer to? A. Well, I don't recall.

Q. I believe when your deposition was taken that you advised us that your income tax return would show the payment of the finder's fee to Mr. Stegmann. Can you find that on the 1951 return?

A. Well, those are all put together.

Q. All put together?

A. It wouldn't show on there separately, no. I was glad to pay him, though. I made \$3,000 on it.

Mr. Jaureguy: I did not get that last answer.

Mr. Buell: She made \$3,000.

Q. How much finder's fee did you pay to Mr. Stegmann? Can you recall?

A. Well, no, I don't recall, but it was not, I think, over \$200, but I don't think it was that much.

(Testimony of Lois Parker.)

Q. Well, now, there is a notation on the bottom of the \$22,000 mortgage reciting an advance of \$1500 to Mr. Stegmann on April [485] 20, 1951, the day after you acquired the Wrist timber.

Was there any connection between that advancement to Mr. Stegmann and his finder's fee?

A. It hasn't anything to do with his finder's fee, but it has to do with me selling the timber.

The Court: The day after she acquired it or the day after she sold it?

Mr. Buell: The day after she acquired it.

The Court: When did you sell the timber?

A. I think it was sold the 25th, your Honor, but I knew that it was sold.

The Court: You sold it a few days after?

A. Yes, it wasn't very long, but I knew they were going to take the price.

Q. (By Mr. Buell): That was April 25th that you sold it?

A. Yes, it was later than the check.

Q. So then you loaned that money to Mr. Stegmann on the strength of the profit that you expected to make on the resale of the Wrist timber?

A. Well, I wouldn't say I loaned it on the strength of the thing, but I knew I would make a profit, and I loaned him that much money.

Q. That was without consulting Mr. Parker?

A. Yes.

Q. Mrs. Parker, did you shortly, a month or so before the [486] trial here, furnish to Mr. Jaureguy

(Testimony of Lois Parker.)

a number of—an envelope full of cancelled checks and deposit statements for the year 1950-51?

A. Yes, I did, upon your insistence.

Q. Were those all of the canceled checks in your possession for the years 1950-1951 that you knew of?

A. The ones that I gave Mr. Jaureguy?

Q. Yes.

A. Your question is the ones I gave him were all I had?

Q. Yes. A. Well, I believe so, Mr. Buell.

Q. In other words, you do not know the whereabouts of any other checks for 1950 or '51 other than the ones that you gave to Mr. Jaureguy?

A. Well, I am not very careful after they are done by income tax, and I move them quite a lot, so I couldn't be sure, but that is all I know about it.

Q. I take it the same is true for the deposit slips that you furnished him at the same time?

A. Yes, those had been at the auditor's office and back and to Arizona, a number of places.

Q. As I understand it, you do not keep your bank statements as a permanent record at all?

A. No, they just wanted the individual ones, as a rule, and I think that my bank statements, too, I don't remember—you [487] mean like——

Q. Such as Exhibit——

A. Well, like these that you handed me?

Q. Like the two exhibits that I handed you, yes.

A. Yes. Well, yes, I keep them for a time. I gave you those.

(Testimony of Lois Parker.)

Q. Did you have any of your 1950 or 1951 bank statements together with these——

A. I don't know if I did or not. Didn't I send you some?

Mr. Buell: Well, I think, Mr. Jaureguy, if we can agree that there were not any bank statements among the checks——

Mr. Jaureguy: I am rather certain that you asked for these bank statements, for these two months in 1951, and I asked them for them, and they produced them, and that is all I can recall on it.

Now, as far as the checks are concerned, while I am on my feet, as I say, I probably have two or three or four in my file if you care to have them. They were furnished me on another angle of the case, and I figured that angle had disappeared, but you can have them if you want them.

Mr. Buell: All I was trying to ascertain was whether or not there were any bank statements that she knew of that were not included among the checks and deposit slips that she furnished to you.

Mr. Jaureguy: I wouldn't know that. I don't think she [488] furnished any of these, or she furnished no bank statements except those that are now in evidence.

The Witness: Well, I don't believe that I knew you wanted bank statements. I thought you wanted deposit slips for these bank statements.

Q. (By Mr. Buell): Do you know whether or not you have your bank statements for 1950-1951?

(Testimony of Lois Parker.)

A. Well, I don't know, but, you see, our house burned in 1951, and I didn't have very much left after that.

Q. Do you have any recollection of taking bank statements out and setting them aside when you bundled these checks together and sent them to Mr. Jaureguy?

A. No, I just can't remember about any more bank statements. I thought several I sent. How many years checks and so on did I send, Mr. Buell?

Mr. Buell: The checks cover a period from approximately November, 1949, through November, 1951.

A. November, 1949, and that would be some of the '49, all of the '50 and '51, then?

Q. Well, I don't think all of the checks were there, but there were a large number of checks for each of those years through all of the months.

A. Yes.

Q. Mrs. Parker, referring to the—well, I probably should not get into these checks at this particular time, your Honor. I [489] have a few other brief questions that I can go into at this time.

Mrs. Parker, do you recall anything pertaining to the accident in May of 1950, when the Caterpillar tractor slid off the road and was damaged, and subsequently an insurance loss was paid on it, and Mr. Parker purchased the salvage?

A. Well, I remember about a D-6 Caterpillar, and I imagine it would have been about the time, and it was pretty badly damaged.

(Testimony of Lois Parker.)

Q. Didn't that occur up around the area known as Square Top?

A. Well, I think that this D-6 was upset, well, I thought up around Skamania County.

Q. Disregarding the Caterpillar or the tractor for the time being, didn't you and Mr. Parker in the summer of 1950 own a substantial amount of timber up in the vicinity of Square Top Mountain down in Tillamook County?

A. 1950, you say?

Q. Yes.

A. Well, we have owned timber up there for quite some time, and I think we still had timber there then.

Q. There was a considerable amount of timber in Section 7?

A. Yes, that was the salvage timber.

Q. Do you know with reference to that timber that we are just referring to in Section 7 and around Square Top, do you recall whether or not you were conducting any logging operations [490] up there in the summer of 1950?

A. Well, I think my deposit slips would show whether or not I was having any money in them or not.

Mr. Buell: May it please the Court, all of the checks and deposit slips which were furnished by Mrs. Parker and Mr. Jaureguy have been marked as one exhibit number. For the purpose of referring to some of these deposit slips, I suggest—

The Court: Mark them A, B, C, and D.

(Testimony of Lois Parker.)

It is 12:00 o'clock now. Mark it up during the recess.

(Discussion off the record.)

(Noon recess taken.) [491]

Afternoon Session

LOIS PARKER

thereupon resumed the stand as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

(Continued)

By Mr. Buell:

Q. Mrs. Parker, do you recall a tract of property that you and your husband acquired in Washington, either in Clark or Skamania County, which was sold to the Weedman Lumber Company sometime in 1951, the one that has been referred to in the Cottrell tract in Mr. Parker's testimony?

A. What do you wish me to recall about it, Mr. Buell?

Q. Do you recall the transaction?

A. Do I recall——

Q. Do you recall that you had the timber and that it was sold to the Weedman Lumber Company?

A. Yes, I recall that.

Q. Do you recall whether or not Mr. Stegmann

(Testimony of Lois Parker.)

did anything with reference to that timber towards the sale to the Weedman Lumber Company? Did it show it to any representative of that company?

A. I don't recall whether he did or not, but I believe that he may have shown them the corners.

Q. You say you believe he may have shown it? [492]

A. He may have shown them the corners. I am not positive about it.

Q. Has your recollection in that respect been refreshed since the time your deposition was taken?

A. Well, I don't know, Mr. Buell. It could have been.

Mr. Buell: Could the witness be handed Exhibit 41, please, which is the \$382 check in payment of Mr. Stegmann's services?

Mr. Jaureguy: What is the number?

Mr. Buell: 41.

(Document was presented to witness.)

Q. Do you recall that check, Mrs. Parker?

A. Yes, I have seen this check.

Q. Do you recall or were you present at the time that it was given to Mr. Stegmann?

A. I don't remember, Mr. Buell.

Q. You do not have any recollection at all as to when or where it was given to Mr. Stegmann?

A. Well, it just seems to me that it was in Vancouver, but I don't remember; but I think I was there, but I am not positive about that even. It seems to me I was.

(Testimony of Lois Parker.)

Q. It is your best recollection, then, is it, that the check was delivered to Mr. Stegmann at Vancouver?

A. Well, as well as I know, it was.

Q. You cannot be positive, but that is your best recollection?

A. I think so. [493]

Q. Referring to the \$22,000 note and mortgage again, you know what I am talking about when I refer to that?

A. Yes, I assume so. There is only one.

Q. Did I understand you correctly this morning that you believed you recalled some discussion about the prospects of making that loan with your husband some time before that loan was actually made and the money delivered?

A. I don't recall that I had a definite conversation with him about that one, but I may have had, but we did talk about loaning some money that we had saved there.

Q. I am sorry if I appear confused, but could I have that last answer read back?

(Answer read.)

Q. (By Mr. Buell): Had you had any discussion at all with Mr. Stegmann within two or three weeks immediately prior to November 20th about his possibly getting a loan from you or Mr. Parker?

A. I had had no discussion with Mr. Stegmann about the loan until the time it was made.

Q. So, then, when you took the \$22,000, or I believe you said it might have been a little more than

(Testimony of Lois Parker.)

that, when you took that from your safe deposit box you brought it home for the purpose of loaning it to somebody, but you did not know who?

A. No, I would not say that.

Q. Well, is it that you brought it home for the purpose of [494] either loaning it or putting it to some use where it would draw interest; isn't that right?

A. I think my husband told you that.

Q. Was it your idea or his idea to take the money out of the bank?

A. I believe he told me to bring it, but I don't know, Mr. Buell.

Mr. Buell: If the Court please, I had contemplated asking the witness some questions with reference to the bank deposit statements and checks, but in their present form it would take quite a bit of extra time to try to run through them. We propose to offer them as an exhibit and would like to have the opportunity of having a ledger made so that the checks are listed chronologically and by number as to the payee, and I will have that done during the recess that the Court indicated this morning.

The Court: All right.

Mr. Buell: That would close our direct examination.

The Court: Mrs. Parker will be here anyway.

Mr. Buell: We would like to offer in evidence Exhibit No. 43, the bank statement of Chet or Lois Parker's account, Exhibit No. 74——

(Testimony of Lois Parker.)

The Court: I think it would be 76, wouldn't it? Oh, 76 is in. What is 74?

Mr. Buell: 74 are the checks. [495]

Mr. Lindsay: 74, according to my notes, is three exhibits from the Lois Parker deposition.

The Court: What do you want to offer?

Mr. Buell: The assignment of the option.

Mr. Strayer: I have got 74 as the assignment.

Mr. Lindsay: There is a No. 17 that is the assignment, and there is also an assignment in Exhibit 74.

The Court: All right. Call that 74-A.

Mr. Strayer: 74-A?

The Court: Yes, it is admitted.

Mr. Buell: And Exhibits 50 through 54, which were the income tax returns.

The Court: Any objection to the income tax returns, Mr. Jaureguy?

Mr. Jaureguy: No, I have no objection.

The Court: All the exhibits offered are admitted.

(Photostatic copy of Chet or Lois Parker Bank Statement Account previously marked Plaintiff's Exhibit 43 for Identification, was thereupon received in evidence.)

(Photostatic copies of Income Tax Returns previously marked Plaintiff's Exhibits 50, 51, 52, 53 and 54, were thereupon received in evidence.) [No. 54 is U. S. Form 1045.]

(Document, Assignment of Option, dated August [496] 13, 1951 (previously identified as

(Testimony of Lois Parker.)

Exhibit 74) was thereupon marked Plaintiff's Exhibit 74-A for Identification and received in evidence.)

Mr. Buell: Also Exhibit 27, copy of the deed, Exhibit No. 27, which was brought to Mr. Abraham's office.

The Court: All right. Also admitted.

(Document, carbon copy of Bargain and Sale Deed, previously marked Plaintiff's Exhibit 27 for identification, was received in evidence.)

The Court: Mr. Lindsay?

Cross-Examination

By Mr. Lindsay:

Q. Prior to this suit commencing, Mrs. Parker, had you ever personally met or conversed with any of the Winans, Ross Winans, Paul Winans, Audubon Winans, Linnaeus Winans, or Ethel Winans?

A. No, those names I have never spoken to or met them.

Q. All right. Did you ever talk with any one of those Winans over the telephone?

A. No, I don't believe so, other than I related this morning.

Q. What did you relate this morning?

A. I related that Mr. Winans announced himself as being the one who called my husband. Other than that I never heard his [497] voice even.

Q. When would you place that telephone call?

(Testimony of Lois Parker.)

A. I don't remember, Mr. Lindsay.

Q. Where were you staying at the time you received that telephone call?

A. Well, I can't remember that.

The Court: That would not be evidence, anyway, if the operator says that Mr. Winans is calling.

Mr. Lindsay: I was asking the witness where she was at the time she received the telephone call, your Honor, where she was staying, in Vancouver or McMinville.

The Court: Do you remember?

The Witness: No, I do not, your Honor.

The Court: All right. Go ahead.

Q. (By Mr. Lindsay): I am asking you whether it would be possible that you received that telephone call on the morning of September 16th?

A. I couldn't be sure, Mr. Lindsay.

Q. Is it possible the time that you heard Paul Winans speak on the phone was the morning of September 16th?

A. Well, it is very possible. Mr. Winans called my husband several times after the deed was delivered.

Q. I am referring to this one conversation that you said you picked the phone up and you heard somebody apparently identify himself as Paul Winans and ask for your husband. [498]

The Court: She did not so testify at any time. She merely testified that she asked who was calling and the operator came back and said, "Mr. Winans is calling."

(Testimony of Lois Parker.)

Mr. Lindsay: I did not understand her to so testify.

Q. Now, were there any other phone conversations that you know of between Paul Winans and your husband?

A. I can't place the date just definitely, but I think there were some prior to the time that the deed was delivered, also. Now I think I was remembering that time, but I won't say for sure.

Q. Turning to your role in the purchase of this Winans timber, I want to see if I understand the evidence generally in so far as you are concerned.

First of all, with respect to the option, you read it over and were familiar with it, is that correct?

A. Well, I read it over, but I couldn't tell you right now what it says.

Q. All right; but at that time you did read it over?

A. Yes, we both read it, my husband and myself, the night of the 13th.

Q. And you have had a copy of that option in your possession?

A. Oh, definitely, that is what I paid the money for.

Mr. Lindsay: Now which—was that the copy of the option she had? Was that the one in Lois Parker's deposition in Exhibit 3? Do you recall? I am trying to get the physical [499] option that she had in her possession.

Mr. Jaureguy: Right offhand I do not know any more about it than you do.

(Testimony of Lois Parker.)

Mr. Buell: I believe that was a photostatic copy that the Parkers had furnished us through their attorneys at McMinnville. Would you have Exhibit 74?

Mr. Jaureguy: No, I do not have—74, I think, are the checks.

Mr. Buel: No, 47.

Mr. Lindsay: I want the copy of the option that the Parkers are supposed to have had.

Mr. Jaureguy: Mine are in the hundred bracket.

The Court: Has it been introduced in evidence, the option?

(Discussion off the record.)

Mr. Lindsay: I want the copy of the option.

The Court: Has that not been introduced yet?

Mr. Lindsay: I do not know which one has, but I want to get the particular one which the witness on her deposition testified was the option which she had in her possession.

The Court: The pleadings admit the execution of the option and likewise the stipulation of admitted facts has attached to it a photostatic copy of the option.

Mr. Lindsay: Your Honor, the point I am making—perhaps I might short-cut it by asking the witness this question:

Q. The copy of the option that you had in your possession [500] had the signature of Walter Stegmann under the line, under the word “Approved”?

(Testimony of Lois Parker.)

The Witness: Did you say do I know if it does have?

Q. Did it have; do you recall whether it did or not? A. No, I don't, Mr. Lindsay.

Q. Well, that is the purpose for which I want the document which they had.

The Court: Why can't you take a photostatic copy?

Mr. Lindsay: I can take a photostatic copy.

The Court: If you will get one.

Mr. Lindsay: I do not have that exhibit. It is not mine.

The Court: Show her this one.

(Document presented to witness.)

The Witness: Yes.

Q. (By Mr. Lindsay): Does that have Walter Stegmann's signature under the word "Approved"?

A. Yes, it does, Mr. Lindsay, as near as I know.

Mr. Lindsay: Well, then, if your Honor please, I would like to get the copy produced at the deposition.

The Court: Is there any dispute about the fact that Walter Stegmann signed that option?

Mr. Lindsay: It is not——

The Court: All right, then; what are you worrying about?

Mr. Lindsay: Because, your Honor, I think there is a connection between that option and the notice of the exercise [501] of the option, the next document involved.

(Testimony of Lois Parker.)

The Court: Well, show the next document.

Mr. Buell: Here is a photostatic copy of the option without the signature.

Mr. Lindsay: Is there any number on it?

Mr. Buell: No, just an extra copy that I had in my file.

The Court: Do you want one with or without the signature?

Mr. Lindsay: I want one without the signature.

The Court: You want one without the signature?

Mr. Lindsay: Yes, I do.

Mr. Buell: I just gave it to him.

The Court: Show it to her.

(Document given to the witness.)

The Court: What exhibit does she have in her hand?

The Witness: It is not marked, your Honor, unless it is a "C" on it, perhaps.

The Court: What do you want that one numbered without the signature?

Mr. Buell: Well, I suggest that it be marked as 74-B.

The Court: All right. Mark it.

Mr. Buell: It is a photostatic copy of one of the exhibits attached to the Lois Parker deposition.

(Document, carbon copy of Option, was there-upon marked Plaintiff's Exhibit 74-B for identification.) [502]

Mr. Lindsay: The point I am trying to make,

(Testimony of Lois Parker.)

your Honor, is at the time of the deposition we requested a copy of the option they had had in their possession and which at that time was introduced and which did not have the signature of Walter Stegmann underneath the line "Approved."

The Court: You have got a photostatic copy of it.

Mr. Lindsay: I do not know if I do or not. If Mr. Jaureguy will stipulate that that is the same as the exhibit I saw at the time of the deposition, I will be——

The Court: All right. Will you so stipulate?

Mr. Jaureguy: No, I will not stipulate. I do not know. I am certainly not disputing it, though, but I cannot stipulate.

Mr. Strayer: What is your recollection?

Mr. Jaureguy: I have no recollection.

Mr. Ryan: Your Honor, we have not seen all of these as they have gone in. At least I have not. Is there an option in evidence now with a signature?

Mr. Lindsay: No, there is not.

The Court: There is in evidence, and nobody has to prove it any more, and we are not going to have any more proof of a document that has been admitted by stipulation. Let us forget about putting in all kinds of exhibits after they have been admitted in evidence. Let me see that document.

(Document produced.) [503]

The Court: Well, I find that this photostatic copy of an option which is not signed is a duplicate original of the option which was signed.

(Testimony of Lois Parker.)

Mr. Lindsay: With reference to the signature of Walter Stegmann?

The Court: That is right.

Mr. Lindsay: All right; I will proceed along.

Q. The next document in connection with the Winans transaction is an assignment of this particular option which you drew? A. Yes.

Q. And the third document would be the Notice of Election? A. Yes.

Q. As I recall, when your husband returned from Hood River where he had been on the 18th, he showed you a copy of this Notice of Election?

A. I gave Mr. Jaureguy the copies that I had. I don't know which copy it is.

Q. All right. In the copy of the Notice of Election you looked at, did it have the signature of Walter Stegmann under the top paragraph in the document?

A. I don't know, Mr. Lindsay. It had a signature on it.

Mr. Lindsay: Will you, your Honor, permit me to go ahead on this?

The Court: What are you talking about, the exercise of [504] the option?

Mr. Lindsay: Yes, I am.

The Court: That is already admitted in evidence, isn't it?

Mr. Jaureguy: I produced it here and turned it over to Mr. Buell, and my understanding is that he entered it in evidence, and that is the one that the

(Testimony of Lois Parker.)

Parkers gave me. That is the one that was brought back from Hood River.

The Court: What number is this?

Mr. Lindsay: The one put in evidence is 307, which is the one we brought, which has the signature of Walter Stegmann on the top line. I want to get the copy which has not the signature of Walter Stegmann.

The Court: What number is it?

Mr. Buell: It is No. 26, not signed, but it was in.

Mr. Lindsay: Would you show Exhibit 26 to the witness, please?

The Court: Has that been admitted?

The Clerk: Yes, your Honor, that is in.

Q. (By Mr. Lindsay): That is the one which you had supplied to your counsel, through your counsel to us, as a notice of election which you had in your possession?

A. I couldn't say, Mr. Lindsay. I have no idea. These things have all been handed around from Mr. Marsh and Mr. Jaureguy, and I just don't know. There are so many papers of this [505] option and this election to purchase that I don't know.

Mr. Lindsay: May I ask Counsel whether or not the copy of the notice of election which he has produced here had a signature of Walter Stegmann under the line at the top paragraph?

Mr. Jaureguy: It did not have any signature at the top paragraph. I think it had a signature down in the lower left-hand corner.

(Testimony of Lois Parker.)

The Court: What did you say?

Mr. Jaureguy: I think that the document which I produced yesterday or the day before and turned over to Mr. Buell was a white—it looked to me like original typewriting, but at the top where there was a line there was no signature.

The Court: That is this one (indicating document)?

Mr. Jaureguy: Down in the lower right-hand corner there were two signatures, and in the lower left-hand corner there was one signature.

The Court: That is Exhibit 26, and it has been admitted in evidence.

Mr. Jaureguy: That is it.

Q. By Mr. Lindsay): Then your next occasion with this transaction is when you came to Hood River on September 10th to see Abraham?

A. I got the check to pay Miss Winans on Sunday before that.

Q. All right. Why did you get a cashier's [506] check?

A. Well, I had to check the money, and they didn't want my personal check.

Q. Who did not want your personal check?

A. The Winans didn't want my personal check.

Q. How did you know they did not want your personal check?

A. Well, I don't know; I think he had told my husband, or some reason, but that is the reason we didn't have that so I had to take something from

(Testimony of Lois Parker.)

the bank to show that this was the money when he gave me the deed.

Q. The basis you got it was Paul Winans told your husband that?

A. I wasn't there when he told him, but I—he didn't want my personal check so I had to take it like in cash, only I didn't want to just take \$95,000 in cash.

Q. But you understood the basis for getting the cashier's check was some conversation between Paul Winans and your husband?

A. Well, that was my husband, Mr. Lindsay.

Q. Had you ever met Attorney Abraham before?

A. No, I never had.

Q. And, as I understand, he had been an attorney in a business deal in which your husband had been involved some time before that?

A. That is true. He represented, I think, both my husband and the man that we bought the log dump from in Hood River. [507]

Q. When you went in to see him, did you tell him that you were Mrs. Chet Parker and that he had done or helped do some work for your husband before?

A. As I remember the first time I went in the office, I introduced myself to his office girl because I think Mr. Abraham was not in. I am almost sure that is the way it was, and I told her that he had done work, and my husband sent me in there, and would he be in in the afternoon.

Q. So you do not know whether or not when he

(Testimony of Lois Parker.)

was speaking with you on the afternoon of Monday, September 10th, that he knew your name was Mrs. Parker or not?

A. Well, as I said here, Mr. Lindsay, I couldn't swear that he knew my name, but I just don't. Most office girls would say, "Mrs. Parker is here, and she wants to see you."

Q. This was the first time you met him?

A. Yes.

Q. You walked into his office, and what did you ask him specifically to do for you?

A. You mean when I saw Mr. Abraham in the afternoon?

Q. Yes, the first time.

A. I think he came in the outer office, and he asked me, he asked me or we talked, and I said that we were closing a transaction, and I wanted him to finish the thing for me, the sale or the purchase, whatever you call it.

Q. That was just a conversation in the outer office there? [508]

A. I think so. I think there was no one else in there, and I told him I would have to wait a while. The deed was not over yet.

Q. And then, as I understand it, Mr. Stegmann brought the deed over later?

A. That is right, that same evening.

Q. Then you went into Mr. Abraham's office?

A. That is right. I took the deed into Mr. Abraham's office.

(Testimony of Lois Parker.)

Q. What documents at that time did you turn over to him?

A. Well, I know I gave him the deed because he leaned back in his chair and looked at it.

Q. Did you show him the option?

A. I don't think I even had the option with me.

Q. Did you show him the assignment?

A. I don't recall doing so.

Q. Did you show him a notice of election? Now, when I refer to each of these documents, I am referring to the exhibits which I just showed to you.

A. Yes, well, I don't recall doing so, Mr. Lindsay.

Q. The only document which you gave to Attorney Abraham was this copy of a deed which Stegmann had brought over to you?

A. I may also have given him a title report.

Q. The physical title report itself?

A. I think that I gave him a—I still have the copy—I think I gave him, you know, what do you say? [509]

Q. Preliminary letter?

A. Yes, to sanction the main paper.

Q. The one you got on August 16th?

A. I don't know when I got that.

Q. Would that have been the preliminary title report which you obtained on August 16th or not?

A. I don't know when we obtained it. It was the only title report we got.

Q. You may or may not have shown that to him Monday afternoon? What was your answer on that?

A. I am not positive. I very well may have.

(Testimony of Lois Parker.)

Q. But you did have that physical document with you at that time? A. Yes, I did.

Q. Did Mr. Abraham examine the copy of the deed? Did he read it over? A. Yes, he did.

Q. Did he explain it to you? A. No.

Q. Did he ask any questions about it?

A. He may have asked me if it was a Bargain and Sale deed or if I knew what one was. I am not positive about it.

Q. Well, was it—if you are not positive, what would your reply to that have been?

A. It would have been that I didn't know what a Bargain and [510] Sale deed was supposed to be like. I wanted him to look at it.

Q. Is that the only explanation he made of this copy of the deed you gave to him?

A. He didn't make an explanation.

Q. He asked you no other questions with respect to the prospective deal which you were asking him to close?

A. I don't think he asked me many questions at all that night.

Q. The next morning when you met Attorney Abraham again, was it at the courthouse?

A. No, I met him first in his office.

Q. You went over to the courthouse from his office?

A. You mean did Mr. Abraham and I go to the Courthouse?

Q. Yes. A. Yes, we did.

Q. At that time did you hand him the physical

(Testimony of Lois Parker.)

preliminary title report that we have been referring to here?

A. He had one, Mr. Lindsay. I don't know whether I handed it to him that morning or the night before.

Q. But when he went to check whether certain of the exceptions had been taken care of he had the insurance title report, is that correct? He had the title company's preliminary title report?

A. I don't know how else he would have known what the reservations were, Mr. Lindsay. [511]

Q. I suggest to you, could it have been possible that the reservations might have been typewritten out on a piece of paper?

A. It is entirely possible.

Q. About the revenue stamps, do you know why it was that the seller, Paul Winans, or the Winans family didn't put the revenue stamps on themselves?

A. No, I don't recall the reason.

Q. But you understood the arrangement to be that they would give you a check for them?

A. It must have been the arrangement because we bought them, but I don't know why.

Q. You don't know who made that arrangement?

A. No, I do not.

Q. Well, did you know how many, how much of the check your attorney should bring back to you by reason of those revenue stamps?

A. I didn't even know how many revenue stamps to put on. We had \$125,000 worth because I didn't know if you put on that the amount that you paid for

(Testimony of Lois Parker.)

his option and everything or just the amount of the stamps. I didn't know how you bought revenue stamps.

Q. Was it your understanding that the Winans were going to give you the revenue stamps for \$125,000?

A. Oh, no, that never was my [512] understanding.

Q. What was your understanding?

A. I don't know, Mr. Lindsay, what it was.

Q. With reference to the refund which you were supposed to get by reason of the additional acreage reserved by the Winans, did you instruct your attorney as to the amount of the check he should receive?

A. I don't remember about that, Mr. Lindsay.

Q. Did you tell him he was to receive a refund check?

A. Oh, yes; I knew there was a refund because they bought extra land other than the reserved area, I mean other than the reserved area excluded.

Q. What is your understanding as to when that was arrived at, as to the amount of that check?

A. I thought it was probably arrived at when they got the, what do you say, the description all set out and figured up. I don't know when they arrived at it. It was so much per acre, I believe.

The Court: It was so much what?

The Witness: Per acre.

Q. (By Mr. Lindsay): What was your understanding on the method by which that amount was determined?

(Testimony of Lois Parker.)

A. Well, I don't understand how surveyors do that. I don't know.

Q. Who calculated that amount?

A. Well, I suppose Mr. Stegmann and the man that represented [513] Mr. Winans. I don't know.

Q. Do you know where they would have, at what physical place they would have arrived at those calculations? A. No, I don't, Mr. Lindsay.

Q. Would it have been possible for them to have arrived at it in Vawter Parker's office on Saturday, August—September 8th?

A. It is possible, or maybe they would have had to go to an office and use one of those—there is some sort of little instrument that goes around that I saw in the Farm Security Office one time. They have a little thing that they can measure and see the fields. Maybe they had to go and do that; I don't know.

Q. Did you have knowledge that Mr. Stegmann and Mr. Haynes had been in the title insurance office on Saturday morning, September 8th?

A. No, I did not have any knowledge where they were, Mr. Lindsay.

Q. You went over to Vawter Parker's office, is that correct, from the courthouse?

A. On the 11th I did, yes.

Q. And you went into the little room where his girl is and asked if you could see him; is that correct?

A. I went into the outer office and asked if Mr.

(Testimony of Lois Parker.)

Parker and Mr. Abraham were in the inner [514] office.

Q. Then you went into the inner office?

A. That is true.

Q. While you were there in the presence of Mr. Abraham and Mr. Vawter Parker, did you engage in any conversation concerning the refund check?

A. Oh, quite possibly.

Q. What would that have been?

A. Well, I don't know, Mr. Lindsay.

Q. Do you recall how you left Vawter Parker's office?

A. Yes, I left by his private door, private entrance.

Q. You left by the private entrance?

A. Yes, there is two doors, you understand; one that goes out of the hall to his private office, and one that goes out of the hall to his outer office.

Q. If you leave by the private entrance, you do not go into the waiting room again; is that correct?

A. That is true.

Q. Does Walter Stegmann owe you any money today? A. Yes.

Q. Do you know how much that is?

A. Well, I knew a few moments ago before lunchtime, but I have forgotten the amount.

Q. Can you tell us approximately how much it is?

A. I think it is \$1200, but I have forgotten.

Q. \$1200? [515] A. I think so.

(Testimony of Lois Parker.)

Q. Of what is that sum made up?

A. Well, that is the balance of that note after the \$25,000 is applied.

Q. Did you ever make a demand on Stegmann for that balance? A. Yes.

Q. When would you have done that, Mrs. Parker?

A. Several times.

Q. Well, when was the first time?

A. I don't remember.

Q. Have you done so in writing?

A. I think so.

Q. Do you know whether it would have been before April 26, 1952, the time we first took Walter Stegmann's deposition in this case?

A. I don't remember, Mr. Lindsay.

Q. How many demands have you made on him, Mrs. Parker?

A. Well, I think I made one in writing that I remember distinctly of, and I don't know how many others. I have not seen him very often.

Q. Do you recall when the second mortgage on Stegmann's house was due? A. Yes.

Q. On the house Stegmann was living in, do you know when that was due? [516]

Q. Yes.

A. Did you say the second or first mortgage on it?

Q. As I understood, you hold the second mortgage on Stegmann's house?

A. I took up a first mortgage, also.

(Testimony of Lois Parker.)

Q. Well, let us just deal with the second mortgage first. Do you recall when that was due?

A. No, I don't recall.

Q. Did you make a demand on Stegmann for that amount?

A. Well, I don't think it was demanded before it was due.

Q. Well, subsequent to the time—is it due now?

A. Well, I don't remember that even.

Q. You say you purchased the first mortgage?

A. That is right.

Q. That would have been at The First National Bank in McMinnville? A. Yes.

Q. At the time you purchased it, was the mortgage due and owing?

A. Are you referring to the first or second mortgage?

Q. I am referring to the first.

A. The first mortgage, yes, was due and owing.

The Court: But you don't know the date, is that right? You don't know when you paid The First National Bank off?

The Witness: Yes. [517]

The Court: When?

The Witness: I think it was in 1951, in March or April, after we returned.

Q. (By Mr. Lindsay): I moved on to that mortgage, but I should state—that balance which you say Stegmann still owes you of, was it about \$1200?

A. Well, my recollection is what I saw in the

(Testimony of Lois Parker.)

back of that this morning, and it seems to me it was.

Q. I won't bind you to that figure, but there is an amount such as that. Is that on the \$22,000, November, 1950, note?

A. That is the balance of all the money that he owed us due to this loan commitment and these notes, and I applied all the money he gave me back on it, and there was still some due, and that is the amount due.

Q. You cannot identify whether that is on the November note or the May, 1951, note? Is that right?

A. No, I think those were—I made him pay the checks first. Those were paid, and the rest of it, I think, is on the \$22,000 note.

Q. So the balance owing would be on this November, 1950, note, is that correct?

A. I believe so, Mr. Lindsay.

Q. Now, on that particular note I notice you took a mortgage on some particular equipment. Where is that equipment today?

A. I don't know, Mr. Lindsay. [518]

Q. Have you made any efforts to collect on that equipment? A. To repossess it?

Q. To take repossession of it? A. No.

The Court: Did you loan Stegmann any money after September, 1951?

The Witness: No, sir.

The Court: Did he make any payments except that \$25,000 payment, after September, 1951?

The Witness: No, sir; he did not.

(Testimony of Lois Parker.)

The Court: There have been no financial transactions between you and Mr. Stegmann subsequent to the time that he turned back the note and the check for \$25,000?

A. We did repossess his house down there that we had a first and second mortgage on. That is the only one, though.

Q. (By Mr. Lindsay): In connection with that repossession, did you file a suit to do that?

A. No, Mr. Crow handled that in McMinnville.

Q. Mr. who?

A. Mr. Crow, Mr. Lloyd Crow.

Q. Well, on those notes, that May, 1951 note, the loan commitment, that had a promissory note, didn't it? A. That is true.

Q. And you just indicated that you have collected all that money on that? [519]

A. When I got the \$25,000 back he only had two checks out, and I deducted those from the twenty-five and applied the rest of it to the \$22,000.

Q. Did you ever return that note to Stegmann?

A. Well, I don't believe so, because Mr. Jaureguy has it, and there was only one.

Q. By the way, on that \$10,000 loan commitment, do you recall the conversations leading up to it? A. Not too clearly, no.

Q. Do you know why Stegmann wanted that loan commitment?

A. I don't really know that I do.

Q. I am sorry. I didn't hear your answer.

A. I don't, I am not sure that I do know; no.

(Testimony of Lois Parker.)

Q. Continuing along on the note, did Stegmann ever say what he wanted it for in your presence?

A. Which note are you referring to, Mr. Lindsay?

Q. The \$10,000 loan commitment made in May, 1951.

A. No, I don't believe I knew just exactly what he wanted it for.

Q. That mortgage you took in connection with that note which you now say has been paid off, has that mortgage ever been satisfied?

A. I don't know what you mean by a mortgage. You mean on his house?

Q. No, I am referring to the equipment involved in the May, [520] 1951, loan, which, I believe, was the two Carco winches and a 'dozer blade.

A. Well, I marked that note "Paid." There isn't any more due and owing. I mean, I don't hold, as you say, a mortgage on that any more, and when he paid the \$25,000 he didn't owe us any more money, and I just canceled it. I didn't want to do any more with it.

The Court: Was that mortgage recorded?

Mr. Lindsay: I don't know, your Honor. I was just going to find out.

Mr. Ryan: The testimony shows it was not.

Mr. Jaureguy: No, it was not.

Q. (By Mr. Lindsay): I meant to ask you, do you have any experience at all in buying timber, Mrs. Parker? A. In buying timber?

(Testimony of Lois Parker.)

Q. Yes.

A. I am afraid that I couldn't very well go out and buy ten million feet of timber, no.

Q. I think in your deposition you testified that you were not able to evaluate any timber holdings?

A. Well, if you had one small tract I might be able to if I thought I knew pretty well about it, but not a large tract, no, not at all.

Q. Your maiden name was Hutchins?

A. Yes. [521]

Q. And your father is Roy Hutchins?

A. My father's name is Thomas Roy Hutchins.

Q. Thomas Hutchins?

A. Thomas Roy Hutchins.

Q. What business is he in?

A. He is retired.

Q. He is retired? A. Yes.

Q. He has not, say, in the year 1951, engaged in logging activities?

A. I don't think my father has ever engaged in logging activities himself.

Mr. Lindsay: That is all.

The Court: We will take a recess.

(Short recess.)

Mr. Lindsay: I was just going to say I had found a copy of the Lois Parker deposition, Exhibit 3, which has the photostat, I think, of the document which was given to the witness which they produced in answer to the option which they had in their possession.

(Testimony of Lois Parker.)

The Court: It is unnecessary. All right, Mr. Ryan.

Cross-Examination

By Mr. Ryan:

Q. Mrs. Parker, do you recall that after the note of May, 1951, [522] which is in the amount of \$10,000—that it could be drawn upon the amount \$10,000—that Mr. Stegman paid you back moneys on that note in the sum of \$2300?

A. Yes, I know that he paid me some back.

Q. Do you know the source of that money?

A. I am sorry——

Q. Do you have any knowledge of the source of that money?

A. Well, no, I am not sure, but I think that he brought me a check from something he had sold or something, but I am not positive about it.

Mr. Ryan: That is all.

Mr. Jaureguy: I think I will ask a couple of questions, if I may.

Cross-Examination

By Mr. Jaureguy:

Q. You told about a telephone call, that the operator said it was Mr. Winans and that he wanted your husband, and you called your husband. Would you have any way of knowing whether that was from a private telephone or whether or not it was from some kind of a public phone?

A. It was from a pay phone.

(Testimony of Lois Parker.)

Q. How could you tell that?

A. Because we knew it was. You could hear the money drop in.

Q. Just one other question, and that is: Prior to the time [523] you closed this deal, did your husband tell you anything about any argument he had had with Mr. Winans? A. Yes.

Q. Just tell us about that briefly, please.

A. Well, it was——

Mr. Krause: Pardon me, but might we find just how that would be admissible here, some argument that her husband told her about not in the presence of Mr. Winans?

Mr. Jaureguy: I will withdraw it and ask a different question, and then he will get the relevancy of it, I think, and we will save the argument.

Q. You left Mr. Parker's office, Vawter Parker's office, before Mr. Winans came in? A. Yes.

Q. Was there any reason for that besides preferring the courthouse to wait in?

A. (No answer.)

The Court: Well, answer the question.

Q. (By Mr. Jaureguy): Yes, I say, was there any reason? A. Yes.

Q. Just explain what that is. I don't want to upset you, Mrs. Parker.

A. Well, my husband said that he had had such a bad argument with Mr. Winans. I was angry anyway because he didn't come on time, and

(Testimony of Lois Parker.)

so I left so as not to argue with him. I did [524] not wish to quarrel with Mr. Winans about it.

Q. That is, you were a little bit aggravated because he had not shown up when he said he would, and then with that on top of the argument that your husband told you about, you just didn't want to appear?

A. Well, yes, and in the option it does not say a word about him wanting all those reservations he finally put in the deed, and my husband argued with him about that, and every time we had anything to do with him he just either didn't come, or he just didn't treat us nicely.

Mr. Jaureguy: That is all.

Mr. Krause: Your Honor, I think I will move to strike that entire answer because, obviously, all of what her husband told her—now, I will concede that he had a quarrel with Winans, and perhaps that that might be, would have been proper, but what quarrels she had and the trouble they had, and so on, I move to strike all that.

The Court: Yes, all except that they did have a quarrel.

Mr. Jaureguy: I would like to save an exception to that.

The Court: What the quarrel was about?

Mr. Jaureguy: Yes, I would like to save an exception on the ground of the nature and the severity of the quarrel.

The Court: It does not make any difference to me. I have listened to the testimony.

(Testimony of Lois Parker.)

Mr. Jaureguy: Well, I know that if your Honor strikes it [525] you will not be influenced by it. That is why I take exception. That is all.

The Court: I would like to ask a question.

Q. You say that you knew that this was a call from a pay station, the one that was made by Mr. Winans to your husband when you answered the telephone, is that right? A. Yes.

Q. You could tell by the fact that you heard the money drop in the box? A. Yes.

Q. Mrs. Parker, was that a person-to-person call?

A. It was, but I said my husband was coming, and I was holding the receiver.

Q. So your husband was home that night?

A. Oh, yes; he was home, your Honor, but I had to call him to the phone, and he just didn't come when I said he was coming.

The Court: All right. That is all.

Mr. Krause: May I ask a question just on this?

The Court: Go ahead.

Cross-Examination

By Mr. Krause:

Q. In connection with this matter that you just testified to, that was your explanation for going out of Mr. Parker's office [526] immediately when Paul Winan's name was announced, is that right?

A. I didn't know his name was announced, but if it was announced that is the reason I didn't want to meet Mr. Winans there.

(Testimony of Lois Parker.)

Q. The girl came in and said, "Paul Winans is here." You immediately went out through the door into the hallway, isn't that correct?

A. I don't know. I left before Mr. Winans came; I know that for sure.

Q. Well, you left before he got into the room, anyhow? A. I was not introduced to him.

Q. No, you were not? A. That is true.

Q. You did not wait for that, did you?

A. I certainly didn't.

Mr. Krause: That is all.

The Court: Any further questions?

Redirect Examination

By Mr. Buell:

Q. Mrs. Parker, Mr. Lindsay brought up the question of your taking over a house that you had previously sold to Mr. Stegmann. Do you recall what the consideration for that transfer was? [527]

A. You mean when I bought it from the bank?

Q. Yes.

A. I think the first mortgage was thirteen hundred and some dollars.

Q. Then did you not obtain a deed to that property from Mr. and Mrs. Stegmann?

A. I think Mr. Crow got a deed from them.

Q. Didn't that deed recite that it was in consideration of \$5500?

A. I never saw the deed that we got from Stegmanns. I don't know.

Q. The sum of some \$5500 does not ring a bell

(Testimony of Lois Parker.)

at all in connection with the deed from the Stegmans to yourselves on that house?

A. I never saw the deed at all.

Q. My question was whether or not the figure of \$5500 to you is in any way associated with the transfer of the Stegmann house from the Stegmann name to the name of yourself and your husband?

A. If there was any connection, it had to do with the cost that we had on the house, and I may have told him how much we had in it with the mortgage and all.

Q. It is a fact, isn't it, Mrs. Parker, that when that house was taken back you gave Mr. Stegmann full credit for the balance of the \$3500 second mortgage that you held on the house, didn't [528] you?

A. I didn't give him credit for anything, Mr. Buell. We didn't get our money out of the house.

Mr. Buell: I have no further questions.

Mr. Jaureguy: No more questions.

Recross-Examination

By Mr. Ryan:

Q. Just with reference to this mortgage, as I understand this, and you can correct me, there was a \$3500 second mortgage which has been previously mentioned here in the testimony regarding the indebtedness arising out of a load of logs that was assumed by Mr. Parker. Then you assumed the first mortgage held by The First National Bank of McMinnville. is that correct?

(Testimony of Lois Parker.)

A. That is true.

Q. And those combined sums amounted to a satisfaction which you took for the house which is now yours, is that correct?

A. That is for the amount of money, yes, and we had to spend more money on the house than that.

Mr. Ryan: That is all.

Mr. Strayer: Your Honor, I understand Mr. Parker has had an opportunity to examine the file and is ready to testify.

The Court: Mr. Parker, you resume the stand.

(Witness excused.) [529]

CHET L. PARKER

was thereupon recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff and, having been first duly sworn, was examined and testified further as follows:

Cross-Examination

(Continued)

By Mr. Strayer:

Q. Mr. Parker, the file that you have is the file of the insurance adjuster with relation to an accident occurring on May 25, 1950, in which a truck and a tractor aboard the truck and trailer on the truck were damaged or destroyed, is it not?

A. Yes, it appears to be.

Q. Having looked through the file, do you remember the occurrence, and can you tell us the details?

(Testimony of Chet L. Parker.)

A. Well, it is not very vivid in my memory, but it seems like they—well, to start in, this instrument is in error. I noticed that a little bit in describing where it is at. I think that is where we were confused, both of us, the other day.

Q. In the first place, I take it this is not the incident that you described where your son had paid salvage on a wrecked truck or wrecked cab?

A. No.

Q. All right. Go ahead and tell us about this one.

A. This one happened, I believe, on or near Clarence Creek which flows into the Nestucca River, and Mr. Stegmann, concerning some logging up on the hill—— [530]

Mr. Ryan: Just this point: Could we have this identified by date? That is, what you are talking about?

Mr. Strayer: May 25th.

The Witness: And the truck and the Cat was lost down in the canyon that I held a second mortgage on. I believe I held a second mortgage on it. It says here I did, so I suppose I did.

Q. (By Mr. Strayer): What on, the truck or the tractor?

A. Well, I don't remember either one, but I presume I did.

Q. Who held the first mortgage on it?

A. Well, it says Otto Heider did.

Mr. Jaureguy: If you will pardon me, I think you will agree with me that we do not have to

(Testimony of Chet L. Parker.)

question your witness as to what it says in a document, and if that is all he is going to answer, I think we are just wasting our time.

Mr. Strayer: Yes, I agree, I can only ask him what he recalls.

The Court: Are you offering the document?

Mr. Jaureguy: It is in evidence, I think.

Mr. Strayer: I would be glad to put it in.

The Court: Let us offer it in evidence.

Mr. Jaureguy: I am not going to agree to have this come in because it is purely hearsay, and the witness has already said that one of the documents is in error. It is the insurance agent's report. [531]

The Court: Let me take a look at it. Go ahead, Mr. Strayer. Interrogate him all you want.

Q. (By Mr. Strayer): Mr. Parker, you made a settlement of that loss with the insurance company, did you not, for \$8,000, which was paid you and to Mr. Stegmann, and you taking an assignment of Mr. Heider's interest, isn't that correct?

A. Well, I don't remember all of that, but I suppose I did.

Q. You do not remember anything about it?

A. Well, no, I am sorry. I don't understand Mr. Heider's assignment of his interest. I don't understand what you mean even on that.

Q. Did you also buy the salvage on the wrecked Caterpillar and on the wrecked truck or either of them?

A. I might have. I would—I put considerable amounts in that kind of stuff, and I might have.

(Testimony of Chet L. Parker.)

Q. Didn't you notice in that file there that there was a bid signed by yourself bidding \$1500 for the salvage on that tractor?

A. Well, I noticed I signed something there, but I didn't pay any attention to what it was.

Q. I think if you want to look at it again you will find out that is what it was. Now, don't you recall also on this same transaction that you also had some kind of interest in the truck which Mr. Stegmann was driving?

A. I don't recall it, but it says in there that I did, but [532] I am not sure.

Q. You don't recall that you also collected a loss on the wrecked truck?

A. Let's get straight here. Did I collect a loss in my name or in Mr. Stegmann's name, or who am I supposed to collect a loss on?

Q. I am just asking what you remember.

A. I don't remember much about it.

Q. You don't remember anything about collecting a loss, or do you?

A. You are talking about the truck now?

Q. Well, I am now, yes, about the truck and trailer. A. No.

Q. Let me ask you if this isn't a fact: Didn't you own either a part-interest in the truck and trailer or else a mortgage on it, I don't know which?

A. Well, I don't know either which, but I think I owned some part of it, yes.

(Testimony of Chet L. Parker.)

Q. And didn't you buy the salvage, and didn't you hire Mr. Stegmann to bring the salvage into Portland?

A. I remember taking it out of the canyon; I remember that. The reason I remember that is that the adjuster—say, yes, I do remember something about that—the adjuster stood on the bank. Instead of being 300 feet, I think it is 550 feet. He said, "Well, we won't go clear down that bank. We will [533] just get at how many pieces it is in." I remember that. Then after I bought it, it was in a little bit different than that. Instead of being in three or four pieces, it was in several thousand pieces, and some of them are there yet. I remember that, and that also had to do with the other piece of equipment over in the Trask River that I took out that belonged to another party.

Q. We are not concerned with the others, Mr. Parker; we are talking about this particular one.

Now, does it come back to you, then, that you did buy the salvage on the truck and tractor and Caterpillar?

A. I remember buying the salvage on the Cat, or I had it anyhow. I took it out of the canyon. I remember that.

Mr. Strayer: I think that is all.

Mr. Jaureguy: I withdraw my objection to that document. I did not think it made any difference whether the statement by the insurance adjuster is correct or not.

The Court: Does anyone else object?

(Testimony of Chet L. Parker.)

Mr. Ryan: I have no objection.

The Court: All right. It may be admitted then.

(File consisting of a group of 14 sheets of correspondence was thereupon marked Plaintiff's Exhibit 77 for Identification and received in evidence.) [534]

Cross-Examination

By Mr. Ryan:

Q. With regard to this Caterpillar tractor and truck which went down in the canyon at this time when Mr. Stegmann was driving the truck, you say you had some interest in that, in the truck and the Cat, as near as you can recall?

A. When we refer to Caterpillar, are we referring to the name, brand of crawler tractor Caterpillar, or are we referring to a crawler-type tractor? This happens to be, as I remember, an HD-14.

Q. Let us reduce the thing. There are two vehicles named here that have been the subject of questioning of Mr. Strayer. Now, there is an interest of Mr. Heider in this. Do you know what it was? A. No.

Q. Do you know whether, if you had an interest in these two vehicles prior to your buying the salvage, whether you acquired that interest from Mr. Heider or from Mr. Stegmann?

A. I just don't know which. I think it was from Mr. Stegmann, but I don't know.

(Testimony of Chet L. Parker.)

Q. You don't know what the nature of Mr. Heider's interest in this was?

A. I suppose it was a mortgage. I don't think he owned part of it otherwise—I guess he owned part of it if he had a mortgage on it. [535]

Mr. Ryan: That is all.

The Court: All right. That is all, Mr. Parker.

(Witness excused.)

The Court: We will take a five-minute recess.

(Afternoon recess taken.)

(Check dated August 26, 1951, \$143, was thereupon marked Defendant's Exhibit 328-A for Identification.)

(Check dated August 18, 1951, \$90, was thereupon marked Defendant's Exhibit 328-B for Identification.)

(Check, was thereupon marked Defendant's Exhibit 328-C for Identification.) [536]

WALTER STEGMANN

was thereupon produced as a witness in behalf of the plaintiff and third-party plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Strayer:

Q. Mr. Stegmann, it is true, is it not, that the neighborhood of what you call the Gopher Valley

(Testimony of Walter Stegmann.)

transaction was the first sizeable logging operation that you engaged in for yourself?

A. Well, I would say it was fairly sizeable.

Q. That was the first big one, I mean, that you really undertook on your own behalf?

A. I believe it may have been.

Q. I gather from what Mr. Ryan said the other day that you had a little bad luck on that transaction; you had a fire? A. Yes.

Q. That resulted in the loss of some of your timber, did it?

A. Quite a bit of loss of timber.

Q. That transaction started out, I believe, with an agreement which you had with Mr. Arthur dated the 1st of September, 1949, which has been identified here as Exhibit 31; am I correct in that, Mr. Stegmann? (Presenting [537] document to the witness.)

A. Well, I would say it looks like—this is a copy, all right, or his——

Q. That is the copy that you were turned over to your attorney; is it not, Mr. Stegmann?

A. No, I don't believe so.

Mr. Strayer: Can we stipulate that that is the one we received?

Mr. Ryan: I assume it is. I have not seen it here, but I am sure it is.

Q. (By Mr. Strayer): All right now, Mr. Stegmann, is it not also a fact that about the time and in the performance of your contract you incurred

(Testimony of Walter Stegmann.)

some pretty heavy financial obligations for the purchase of equipment?

A. What was that again? I didn't—

Q. You bought a lot of logging equipment in order to perform that contract; did you not?

A. Well, I had purchased quite a little bit of equipment, yes.

Q. As a matter of fact, you incurred indebtedness of thirty or forty or fifty thousand dollars, didn't you, in buying that equipment?

A. Well, I just don't remember the exact amount.

Q. Yes, I know you do not, but it was a lot of money, was it not? [538]

A. It was a fair amount of money.

Q. Is it not also a fact, Mr. Stegmann, that you got into financial troubles on that Gopher Valley job from which you have never entirely recovered?

A. Well, I don't know just what you mean there.

Q. I mean that some of the bills on that job still have not been paid; isn't that true?

A. Well, I thought they were practically all paid.

Q. What do you mean by "practically all"?

A. Well, I thought they were all paid.

Q. You knew as a matter of fact, that a Mr. Brown down there that you had as a logger had a claim against you; did you not?

A. Well, I do not, I don't remember that.

Q. You knew, did you not, that Mrs. Arthur

(Testimony of Walter Stegmann.)

had a claim against you for money that she claimed was still due on the timber?

A. Well, they—there seemed to be some discussion about whether I did or didn't owe some money on some timber, but I am sure it was paid.

Q. Wasn't there a claim against you by the Willamina Garage, or Mr. Ellis of the Willamina Garage, of some \$4000 for gas and oil, repairs to the equipment that has never been paid?

A. Was it on this Gopher Valley job, do you mean? [539]

Q. On the Gopher Valley job, yes.

A. Well, I don't know as it was on the Gopher Valley job.

Q. What?

A. I say, I do not know as it was on the Gopher Valley job.

Q. Whatever job it was, didn't you have a claim that has never been paid in about that amount?

A. Well, no, I am not sure that it was not paid.

Q. As a matter of fact, you got sued, didn't you, on the bills arising out of the Gopher Valley job involving the claims by Mrs. Arthur, Mr. Ellis, and Mr. Brown?

A. I don't know as I ever got by Mr. Ellis, or I don't remember on Mr. Brown.

Q. Mrs. Arthur sued you?

A. I think Mrs. Arthur or Mr. Arthur was trying to make me pay for some logs that I thought I had paid him for.

Q. That was a dispute, in other words. Were

(Testimony of Walter Stegmann.)

you not also sued by the State of Oregon, the Labor Commissioner, on behalf of your employees on the Gopher Valley job? A. Not that I know of.

Q. You do not remember about that? You have been under the impression all these years that all of your employees have been paid on the Gopher Valley job? A. Yes. [540]

Q. You did come out of the Gopher Valley job indebted to Mr. Parker on a loan of some \$6000 that he made to you during the job; did you not?

A. What was that again?

Q. You came out of the Gopher Valley job owing Mr. Parker on a loan of around \$6000?

A. Well, I did borrow \$6000 from Mr. Parker to gravel a road into this Gopher Valley timber. It was on—and some falling and bucking that was done on the Gopher Valley job.

Q. Is it not a fact, Mr. Stegmann, that ever since the Gopher Valley job you have been indebted to Mr. Parker in varying amounts, in some amounts?

A. Well, no, I don't think so. There is times that I had not owed him any money, I thought.

Q. When do you recall that you were completely out of debt to Mr. Parker?

A. Well, it seemed like after the, during 1950, that I was out of debt with Mr. Parker.

Q. What time in 1950?

A. Well, that was right around the fore part of 1950.

Q. Do you recall this truck accident that hap-

(Testimony of Walter Stegmann.)

pened on May 25, 1950, that Mr. Parker just described? Do you remember that incident when you were driving the truck and trailer with a tractor on board and the main line drive broke, as I understand it, and the truck went over a [541] cliff with the truck driver aboard? Do you remember that incident?

A. Yes, I remember I was driving the truck and hauling the tractor.

Q. Do you also recall that you owned the truck and trailer and the tractor and that Mr. Parker had a mortgage on each of them?

A. I don't know as I did at that time. I mean, I understood that Otto Heider was holding a mortgage on the paper at that time.

Q. Didn't Mr. Parker have a second mortgage?

A. Well, it is possible.

Q. Did you look over that insurance adjustor's file this morning or early this afternoon, the same one that Mr. Parker had?

A. I believe it was.

Q. Pardon? A. I think it was.

Q. You looked the file over, I say?

A. I looked at some of it, yes.

Q. Didn't you refresh your memory that when a settlement was made on the insurance that it was paid to you and Mr. Parker?

A. Well, I think I noticed on the letter there that it said it was, as I remember—I don't remember very [542] clearly—that it was to Mr. Parker,

(Testimony of Walter Stegmann.)

I thought, and I was thinking that—or Mr. Heider and myself, and, therefore, I had an interest in it for they wanted my name on there. I am not sure.

Q. You were logging at that time where? I assume that this occurred in connection with some logging operation you were conducting.

A. What time did you say that was now?

Q. May 25, 1950.

A. I was logging some in Gopher Valley.

Q. I am sorry, I didn't hear you.

A. I was logging some in Gopher Valley.

Q. You were through, then, in Gopher Valley, were you not, Mr. Stegmann? A. In May?

Q. Yes, Mr. Rutherford had taken his contract on March 23, 1950, and you did not log at Gopher Valley after that, did you not?

A. I am sorry. I have the dates mixed up there.

Q. Yes?

A. It was so close that I couldn't quite remember. It was so long ago.

Q. What is your recollection as to where you were logging at that time?

A. I may have been going up to do some road-building and [543] logging out some right-of-ways up some scattered stuff that Willamina Lumber had up on, I can't think of the name.

Q. Would that be up around Square Top?

A. Yes, in the vicinity.

Q. A mountain that is known as Square Top. Is that the name of a mountain in Tillamook County?

A. Well, I believe they refer to it as that.

(Testimony of Walter Stegmann.)

Q. Your recollection is that you had a logging operation there for Willamina Lumber Company?

A. Well, I don't remember exactly. It seemed like I was going up to build some roads or something there.

Q. Whose timber was that that you were logging at that time, Mr. Stegmann?

A. Well, I don't know as I was going to log only the logs that were on the right-of-way, a few scattered ones, and I was—I think from memory, I thought that it was Willamina Lumber's.

Q. I am sorry. I didn't understand the last answer. You thought it was what?

A. I thought it was Willamina Lumber Company's timber.

Q. They were the ones that were paying you, at any rate?

A. That was the ones I intended to take this salvage off for and build the roads.

Q. I notice, according to Mr. Parker's bank documents, [544] that on April 27, 1950, you sold him an arch and borrowed \$200 from him. His record indicates eighteen hundred dollars for the sale of the arch plus \$200 loan. Do you recall that transaction?

A. Well, I don't really remember that.

Q. Well, now on November 20, 1950, was the date that you made your large loan, at any rate, for \$22,000, promissory note that you signed with Mr. Parker; do you recall that? A. Yes.

Q. Will you tell us how that loan arose, the con-

(Testimony of Walter Stegmann.)

versation leading up to it, and just what you agreed to?

A. I don't remember exactly. It is quite some time ago, but it seems like I was out at the, this Gopher Valley operation. I had seen where they had bought the timber cheap, were getting a big price for it and selling it, and other timber brokers I knew of that had told me about buying and selling some timber, and I planned on buying and selling some timber.

Q. You wanted \$22,000 then to finance the buying and sale of the timber?

A. Well, that is what I was thinking. I thought it was \$20,000, but I see now it is twenty-two on the note.

Q. Do you remember your discussions with Mr. or Mrs. Parker regarding that loan? Did you propose that they loan you twenty-two thousand? [545]

A. I remember asking if I could borrow that much money, if I remember.

Q. Did they agree to loan it to you?

A. They did.

Q. What was your understanding as to what their compensation was to be?

A. Well, I was borrowing it as cheap as I could, and, as I remember there was so much interest on it I was to pay them back.

Q. Four per cent interest?

A. I believe it was.

Q. Did you tell them that you had any particu-

(Testimony of Walter Stegmann.)

lar tracts of timber in mind that you wanted to use it for?

A. Well, I may have mentioned some, but I don't know because I think that I was wondering that if I did mention if they were to go, he might possibly go and purchase it himself. He was looking for timber.

Q. Will, did you have any timber in mind specifically? A. Yes.

Q. What tract did you have in mind?

A. Let's see, what was that date now, November, wasn't it?

Q. November 20, 1950.

A. Well, I was looking at several pieces of timber at that time. I mean, there was—I believe there was one or [546] two at, out of Grand Ronde, Oregon, out towards Dolph, and then there was, I think, 160 acres there, as I remember, they wanted about \$15,000 for it. I was looking at it at that time.

Q. Did you figure that you needed a year to swing those deals and pay the money back?

A. Well, it was possible that I might want to buy a piece of timber and log it out. If it was such that the profit would be greater logging, why, I would do it that way.

Q. All right, let us get down, then, to the day that you got the money. Was it on the same day the note was signed?

A. Well, I am sure it was.

Q. How was it paid to you, Mr. Stegmann?

(Testimony of Walter Stegmann.)

A. Well, as I remember, a lot of people I was talking to would rather have cash, and I got cash money.

Q. You got \$22,000 in currency? A. Yes.

Q. Did you have a bank account at that time?

A. I don't know as I did or not. I don't remember exactly. I don't think so.

Q. How long had it been since you had had a bank account?

A. Oh, it must have been just a little while before. I am not sure.

Q. Where did you have your bank account the last time you [547] had one?

A. I think it was in Sheridan Oregon.

Q. Is there only one bank there?

A. Yes, that I know of.

Q. Have you had a bank account since that time? A. No.

Q. All right, now, this \$22,000 in cash, what did you do with it, Mr. Stegmann?

A. Well, there were—I was looking for some timber, and I spent looking at these two pieces of timber I did not buy and several other ones I did not buy, I spent quite a bit of it looking around for other timber.

Q. What do you mean, on living expenses, travel?

A. Living expenses and traveling expenses.

Q. Did you spend it all on living and travel expenses? A. No.

Q. What else did you spend it on?

A. Well, it seems like I had—I bought some timber up on Pea Vine.

(Testimony of Walter Stegmann.)

Q. Who did you buy that from?

A. I think it was a man by the name of Stalter, I believe his name was.

Q. When was that purchased? When was that purchase made?

A. I think it was in the first part of 1950, I believe. I am not sure. [548]

Q. 1950. You borrowed the money in November, 1950?

A. Well, now, I am sorry, I had the dates confused. It would have been in fall of 1950 or 1951.

Q. It was probably early in 1951, you think?

A. It must have been right at about the first of the year, as I remember, but I am not positive. It seemed like—it was in the winter time.

Q. How much did you pay him for that timber?

A. I believe I gave him \$3,000.

Q. In cash? A. It was cash money.

Q. Did you take a receipt for that?

A. I don't know as I took a receipt for it, or I believe I did. I am not sure.

Q. What did you do with the receipt?

A. Well, I have had considerable trouble locating my receipts. I have moved quite a bit, and I have some things stored, and several of those packages where I have had receipts and papers in are—I have been unable to find and identify them.

Q. This is one of the receipts you have never found then? A. I haven't run across it, no.

Q. Did you have a written contract on that Pea Vine timber?

(Testimony of Walter Stegmann.)

A. No, I think he give me a deed to it. I did get the [549] land and all.

Q. Did you record that deed?

A. Well, I believe it was.

Q. In what county?

A. Oh, it was in Yamhill County is where it was recorded.

Q. How long did you hold that timber land before you sold it?

A. Well, I think I sold the timber very shortly after I purchased it, I think, probably within a few months. I am not sure. I can't remember exactly the exact date.

Q. To whom did you sell the timber?

A. I cannot think of his name. It was a man from Washington. I believe it was a man by the name of Mann. I am not sure. It seemed like he purchased the timber.

Q. His name was what? A. Mann.

Q. Do you know his first name?

A. No, I can't remember his first name.

Q. How did he pay you, in cash or by check?

A. Well, I believe it was by check. I can't remember though.

Q. How much money did you get for it?

A. Well, I sold it for \$3,000, as I remember.

Q. The same amount you paid for it?

A. Yes. [550]

Q. So you made no profit on that deal?

A. Well, I had the land in a small cleared area up there that was level.

(Testimony of Walter Stegmann.)

Q. Do you still have that land? A. Yes.

Q. And your understanding is that it is recorded in your name down in Yamhill County?

A. Well, I think it was put in my wife's name, I mean, as it was recorded. I was thinking about—we was maybe having a—it had an orchard up there and——

Q. It had a what?

A. It had an orchard on it and a cleared area, and we were planning on putting some garden in there.

Q. The title then is in your wife? A. Yes.

Mr. Ryan: Excuse me, Mr. Strayer. You assigned that deed to me, however, didn't you, Mr. Stegmann?

The Witness: Well, now, that's right; I recollect I did. I did assign that deed to Mr. Ryan for his helping out on his services.

Q. (By Mr. Strayer): Is it still worth \$3,000?

A. I don't think the ground is worth \$3,000.

Q. It has been logged, I assume, hasn't it? It has been logged since you sold it?

A. Yes, some of it has been taken off, I [551] think.

Q. What else did you spend this \$22,000 on?

A. Well, I had to build some road up there on some of that.

Q. You what?

A. There was some road building to do on it, and put the fire trails out, and I still had to build

(Testimony of Walter Stegmann.)

some fire trails on some land I had logged off of the farm of my father, or the family farm, and there was still some fire trails to be cleared up there, and I had paid a considerable amount for that work being done to clear those out.

Q. How much did you spend for road building and fire trails?

A. I don't remember exactly. It seemed like it was right around \$11,000 on that.

Q. I think in your deposition you gave the figure of \$11,325. Does that sound right?

A. I believe that is right. I think it was taken off from that.

Q. To whom did you pay that money?

A. Well, that was paid to John D. Bailey. Now, I don't know exactly whether he was from Eugene or Roseburg.

Q. How did you get in touch with John D. Bailey?

A. It seems like he was up in that country doing some work, a little gyppo logging and all, and he was in that [552] neighborhood, and I had him do it.

Q. Have you ever seen him since?

A. I have not.

Q. Any idea where he is? A. No.

Q. Have you made an effort to find him?

A. Well, no, I haven't.

Q. All you know about him is that it is a John D. Bailey who comes from somewhere around Eugene or Roseburg; is that right?

A. That's right.

(Testimony of Walter Stegmann.)

Q. You paid that money in cash? A. Yes.

Q. Taking a receipt for it?

A. I am sure I got a receipt for it.

Q. Can you find your receipt?

A. I could not find it.

Q. How long did he work on these roads and fire trails?

A. Well, I don't remember exactly. He was—part of the time he did it, it seemed like, when he was not busy or in the winter time and off and on. I don't know just how much time he did spend on it, but that was what he was charging me for.

Q. He did this work early in 1950, did he, the early portion of 1950-1951, I should say, pardon me? [553]

A. Yes, did some in 1951 and some was done in the fall of '50, I am sure; probably that is when it was.

Q. Where was that, on your parent's place?

A. Some of it was, that's right.

Q. That property belongs to your father and mother, does it? A. Yes.

Q. How much of that \$11,325 was spent on your father and mother's place?

A. Well, now, I couldn't just exactly say how much was spent there.

Q. About what proportion of it was spent there? How much on the Pea Vine tract?

A. I don't know just how many hours he worked on either one. I couldn't—

Q. You have no breakdown on that at all?

(Testimony of Walter Stegmann.)

A. No.

Q. What else did you spend the \$22,000 on?

A. I bought a car; we did, for the family, and I paid a considerable amount down on it.

Q. What is that?

A. I paid down on a car, a new car.

Q. Was that a Mercury?

A. I believe it was.

Q. 1951 Mercury which you bought where? [554]

A. I think it was bought at Lyman-Slack Motors.

Q. You just made a down payment on that? You didn't pay cash for it?

A. No, we didn't pay it down completely, as I remember.

Q. How much of a down payment did you make?

A. I don't know the exact amount on it. I couldn't remember.

Q. Do you still have that car? A. No.

Q. When did you sell it?

A. I think I sold it in 1951. I am not sure.

Q. Well, late in '51 or early?

A. I believe it was late in '51.

Q. You still had it at the time of this Winans transaction; did you not?

A. Yes, I am sure I did.

Q. Did you register that car in your name or in your wife's name?

A. No, that was registered in my wife's name, I believe.

(Testimony of Walter Stegmann.)

Q. Was there any particular reason for doing that that way?

A. Well, not that I really know of, only that I did have a Buick car of my own, and I had a pickup.

Q. Registered in your own name?

A. The Buick was registered in my name. [555]

Q. How about the pickup?

A. Well, I don't remember whether it was registered in my name. It was a pickup that we had on the farm, and I don't remember whether it was registered in my name or in my father's name.

Q. Did your Buick have a mortgage on it?

A. I think it was not paid off completely, I don't believe.

Q. You still have the Buick? A. No.

Q. Now, both of those cars were registered in Oregon, were they? A. I believe they were.

Q. One in your name and one in the name of your wife? A. Yes.

Q. Well now, how else did you spend any part of that \$22,000?

A. Well, I don't remember exactly. We spent a considerable amount for living and traveling expenses were pretty heavy.

Q. Well, down until the time of the Winans' transaction in August of 1951 had you made any timber deals that resulted in a profit to you?

A. What time was this now?

Q. Any time down until August of 1951?

A. You mean from—— [556]

(Testimony of Walter Stegmann.)

Q. From November 20, 1950, to August, 1951?

A. Yes, I believe, I know I bought a piece from Mrs. Johnson in Newberg. It was within a very short time after I bought it that I sold it again, and I had—let's see, I think I located another piece there. I believe I got a finder's fee from Mrs. Parker. That was around Newberg there. It was before the Johnson piece.

Q. Let us put it this way. At the time you bought the Johnson piece did you have any money left from that \$22,000?

A. Well, I would think so. I don't remember the exact amount.

Q. About how much did you have left?

A. That would be hard to say. I mean, I couldn't make any estimate.

Q. You were keeping that money in some kind of a box at home, I understand, at your home?

A. Yes.

Q. You kept no kind of an inventory or record of what was in it?

A. No, if somebody wanted cash for timber I would take out the cash I needed, and if I sold some timber and I got cash money I would put it back in the box, and it was——

Q. Well, as I recall, pardon me, were you [557] through? A. Yes.

Q. I didn't mean to interrupt you.

As I recall, you said in your deposition that you still had some of that \$22,000 left at the time of this Winan's transaction; am I right in that?

(Testimony of Walter Stegmann.)

A. Maybe it is possible, but I don't know whether it was the \$22,000 or whether it was some, I mean, from the other deals I had made.

Q. Do you recall the Wrist deal, the Wrist timber? You had a verbal option on it, didn't you, Mr. Stegmann? A. Yes, I think it was.

Q. From Mr. Wrist up for what, \$3000?

A. Yes.

Q. Where was that timber located, out around McMinnville somewhere?

A. Well, that was between McMinnville and Newberg or the other side of Newberg.

Q. You told Mr. and Mrs. Parker about that Wrist timber; is that what you did?

A. I think I told Mrs. Parker about the Wrist timber.

Q. She took over your verbal option; is that what the deal was?

A. Yes, she paid me so much for the work I had locating it and took over my verbal option to purchase the timber.

Q. How much did she pay you on it? [558]

A. I don't remember exactly. It seemed like it might have been \$100 to \$150.

Q. At the time of your deposition, as I recall, you first said you thought it was less than a thousand dollars, and then a little later on you said \$150; is that your recollection?

A. I believe it was.

Q. The record here shows here, I believe, that the Wrist timber was purchased by Mr. Parker on

(Testimony of Walter Stegmann.)

April 19th, 1951, for \$3000. Now, why didn't you buy that timber yourself, Mr. Stegmann?

A. Well, for one reason, mainly I guess was because that I just wasn't sure whether if I did buy it that I could sell it for \$3000. I thought it was possible that it might, but I didn't want to take the chance on it.

Q. Was it easier for the Parkers to sell timber than it was you?

A. No, it wasn't that I know of. I mean——

Q. Well now, the record also shows that on April 20, 1951, one day after they bought the Wrist timber, Mrs. Parker loaned you \$1500; is that right?

A. Well, I don't remember that. I mean it is just hard for me to remember that.

Q. Don't you remember—Exhibit 35, will you hand that to the witness? [559]

(Document presented to witness.)

Q. Do you notice the additional line at the bottom of that agreement, acknowledging a loan of \$1500?

A. Well, yes, I noticed this here on the bottom of that?

Q. Isn't that dated April 20, 1951?

A. Yes.

Q. And did you borrow \$1500 on that date from Mrs. Parker?

A. Well, it is possible, but I just can't quite remember it. It is possible that I may have borrowed some more money.

(Testimony of Walter Stegmann.)

Q. Is it possible that you didn't have any of that \$22,000 left on April 19, 1951, and that that is the reason why you did not buy the Wrist timber yourself? A. No, I don't think so.

Q. You think you still had some left, and you needed \$1500 more?

A. Well, I could use that much more, I know, maybe I thought I could.

Q. What did you have in mind using it for?

A. Well, purchasing other pieces of timber.

Q. Did you have some other particular tracts in mind?

A. I was looking at a lot of tracts of timber all over the country, and they were, a lot of them, and I just can't remember the detail of each one. [560]

Q. Well now, the record also shows, Mr. Stegmann, that on May 1, 1951, only ten days after you had borrowed that \$1500, you worked out this credit arrangement with Mr. Parker, ten thousand dollar loan whereby you were to be permitted to write checks on his account; do you remember that?

A. Yes, I remember talking about it this morning.

Q. Very shortly after you made that arrangement with Mr. Parker you will recall that you started buying timber from Mrs. Johnson, using that credit arrangement for that purpose; is that correct?

A. I remember buying a piece of timber from Mrs. Johnson, yes.

(Testimony of Walter Stegmann.)

Q. That was on May 14, 1951; was it not?

A. Yes, if that is correct, I mean.

Q. Now, my question is if you had fifteen hundred dollars that you had just borrowed from Mrs. Parker and if you had some of that \$22,000 loan left, why did you not finance that Johnson operation yourself instead of paying interest to Mrs. Parker?

A. Well, I do remember very clearly, it is possible I was looking at a lot of pieces of timber with the intention of purchasing them, and I don't know whether, but I may have had some other tracts of timber in mind.

Q. Do you remember any? [561]

A. Well, there was two or three pieces right around that immediate vicinity.

Q. What were the names of the owners?

A. I don't remember the exact names. I think one was Gus Schot or something like that I believe his name was. Well, I just can't think of the other people's names, but they were right around in that vicinity. There were several nice, small—some were small and some were fairly large pieces of timber there.

Q. Mr. Stegmann, what was your conversation with Mr. Parker in regard to this \$10,000 credit arrangement?

A. Well, I don't remember exactly what all the discussion was on it.

Q. Well, tell us what you do remember.

A. Well, it seems like I did have this, oh, I

(Testimony of Walter Stegmann.)

don't remember the amount of cash money that I did have, but it was cash money I did have, and it is possible that I needed an additional amount to purchase some of these tracts, but I didn't want to pay the interest on the money, if possible, until I did use the money, so as I remember, I heard somewhere that if I had a note that I could borrow so much money on it and then pay some other time whenever the check was made out, why, the interest would start from that day.

Q. You approached Mr. Parker with that program outlined? [562]

A. I think that might have been what it was.

Q. Pardon?

A. I think that might have been what it was.

Q. And did Mr. Parker, by any chance, ask what you had done with the \$22,000 that you had borrowed only five months or so before?

A. Well, he may have asked me. I don't remember. I was telling him I thought I would need an additional amount the way it looked. I wanted to purchase some other tracts.

Q. Were you able to point out to him where you were putting the money to good use and making a profit on it?

A. Well, I don't know as I ever—you can't point out a certain tract of timber.

Q. Well, you had not made a penny with the use of that \$22,000 at the time that you signed the \$10,000 note, had you?

(Testimony of Walter Stegmann.)

A. Well, as I remember, I had bought a piece of timber and sold it.

Q. Which piece?

A. The piece up on Pea Vine.

Q. But you made no profit on that, did you?

A. Well, I still had the land and some timber that was left on there that they did not take off.

Q. Was that land free from encumbrance?

A. Yes. [563]

Q. How much is it worth?

A. Well, I don't know. I mean, it is just hard to say. Depends on who wants it and what it might be used for.

Q. That is the only transaction where you made any money up until that time; is that right?

A. Of course, on this Wrist piece of property, why, I had made a little, yes.

Q. Which piece, pardon me?

A. The Wrist.

Q. You had made \$150 on that?

A. But I don't know whether that had any—it was a good deal, but, I mean they made some money off of it, I guess.

Q. Well now, as soon as you made that \$10,000 credit arrangement, it was very shortly after that that you bought the Johnson timber; is that right?

According to the dates on the checks I believe the first payment was on May 1, 1951, apparently the same date as the loan. Do you recall, did you pay Mrs. David on the same day that you made that ar-

(Testimony of Walter Stegmann.)

rangement with Mr. Parker? May I have those checks?

Mr. Buell: 39-A, B, C, D.

Q. (By Mr. Strayer): What is the date of the check to Mrs. David there, that \$150 check?

A. It looks like, I don't know, it looks like it could be May 10th, or it could be the 14th. I am not sure. [564]

Q. I notice here the copy of the contract—will you hand this to the witness, please—I believe this is the Exhibit attached to Mr. Stegmann's deposition. Do you have a number for that? May we have it marked 28.

(A photostat, Agreement and Timber Bill of Sale, marked plaintiff's Exhibit 28-A for identification.)

(Photostat, Agreement and Timber Bill of Sale, marked plaintiff's Exhibit 28-B for identification.)

The Court: Are you going to have Mr. Stegmann for the rest of the day?

Mr. Strayer: I cannot finish with him, I am sure.

The Court: Do you want to finish with Mr. Stegmann tomorrow?

Mr. Strayer: Oh, I think so, your Honor. I hesitate to make any more predictions, but I really think I will.

The Court: I think there are other people going to interrogate him.

(Testimony of Walter Stegmann.)

Mr. Strayer: I was thinking of my examination only. I presume there will be considerable cross-examination.

The Court: What do you want to do; is Mr. Abraham your witness?

Mr. Strayer: Yes, I would suggest Mr. Buell might talk with Mr. Abraham while I go [565] ahead.

The Court. Proceed.

Mr. Ryan. Is that Exhibit 28?

Mr. Strayer: Exhibit 28.

(Discussion off the record.)

Mr. Strayer: Let us call it 28-A and B.

Q. Now those are the contracts, are they not, relative to the Johnson transaction, Mr. Stegmann?

A. I believe so, that is, they seem familiar.

Q. They fixed the date of the transaction as about May 10, 1951; do they not?

A. Well, Mrs. Johnson's has the 14th on it.

Q. Yes, but Mrs. David was the 10th, and that was the opening part of the transaction; was it not?

A. Well, I believe so.

Q. Those all related to the purchase of the Johnson timber, both of those agreements?

A. How was that?

Q. Both of those agreements related to the purchase of the Johnson timber; did they not?

A. Well, they were adjoining each other, yes.

Q. You paid \$3000 total for the two?

A. I don't remember the exact figure, but if

(Testimony of Walter Stegmann.)

that is what they figured up, why, it would be.

Q. Your checks figure, I think the three checks figured \$2,850, and then there was an item of interest on a note, [566] one hundred fifty, attorney's fees, or a total of \$3000; is that your recollection?

Mr. Ryan: What note are you referring to?

Mr. Strayer: The ten thousand dollar note.

Mr. Ryan: What attorney's fees?

Mr. Strayer: \$150 interest, I mean. Well, no matter, the checks will speak for themselves, Mr. Stegmann. Your recollection is that they—it was in the neighborhood of the price that you paid for the timber?

A. Well, yes, it was around twenty-eight to twenty-nine hundred dollars, something like that.

Q. To whom did you sell the timber?

A. McCormick Lumber Company at Sheridan.

Q. McCormick Lumber Company, and for what price did you sell?

A. I really don't remember the exact figure, but I think it was around probably five thousand, fifty-three hundred dollars, something like that.

Q. Five thousand to fifty-three hundred dollars?

A. I think it was something like that. I don't remember exact.

Q. When was that sale made, how long after you wrote the check and bought the timber?

A. Well, I think it was fairly shortly.

Q. A matter of thirty days? [567]

A. Well, I imagine it was. It was possible.

Q. Yes, all right now, when you sold the timber

(Testimony of Walter Stegmann.)

did you pay back the amounts that had been advanced from that bank account, the \$2,850, in other words?

A. Well, I don't remember. It seems like I made a payment to them, to Mr. Parker or Mrs. Parker, toward a note.

Q. How large a payment did you make?

A. Well, I believe I give the biggest part of it that I made. I paid it to them. Whatever I received for the timber, I think that was the amount I paid to them.

Q. You mean you paid all of the proceeds of that sale over to Mr. and Mrs. Parker?

A. I believe I did.

Q. How did you receive that payment, by cash or check?

A. Well, I don't know. I believe that was by check.

Q. How did you make the payment to Mrs. Parker or Mr. Parker?

A. Well, I can't remember whether I paid them by check or by cash.

Q. It would not have been with your check, in any event, I take it. You might have endorsed the check over to the Parkers, you mean?

A. Well, it is possible, but I don't know. It wasn't my check. [568]

Q. Either you cashed a check and gave them the check, or else you endorsed over to them the check that you got from McCormick Lumber Company?

(Testimony of Walter Stegmann.)

A. Yes, I don't remember exactly.

Q. All right, the thing that I am getting at is, so that at the time of the sale of the Johnson timber, whenever that was, you applied all the proceeds of that sale to your indebtedness to the Parkers; is that right? A. Yes.

Q. So that if we can find out what that amount was we will know how much credit you were entitled to on those notes?

A. Well, whatever is on the back of the note I think is the amount I paid them. I am not sure.

Q. The amount on the back of the note is \$2,300.

Mr. Ryan: Has he the note there to refresh his memory?

Mr. Strayer: No, I do not think he has. That is Exhibit No. 36.

Q. If you look on the back there, Mr. Stegmann, I think you will find the endorsement of \$2,300; is that right? A. Yes, I see \$2,300 here.

Q. Do you notice any other credit on there?

A. Well, I see interest on here. I mean, I don't—

Q. Interest of \$150 or that is \$140, I should say. [569]

A. I think it is something like that.

Q. Well now, you received more for the Johnson property than \$2,300 plus \$140, didn't you?

A. Well, I don't remember exactly just how much I did receive for it.

Q. Did you receive more for it than you paid?

(Testimony of Walter Stegmann.)

Mr. Ryan: If the Court please, we have a copy of this contract which was never asked for at the time of the deposition.

Mr. Strayer: Which contract is that?

Mr. Ryan: Which you are asking the amount that he received.

Mr. Strayer: McCormick Lumber Company. I have never seen it.

Mr. Ryan: It was not asked for at the time of the deposition. I do not know the relevancy of it.

Mr. Strayer: \$5,300 appears to be the correct amount. May we have this marked.

(Document, Agreement and Timber Bill of Sale, marked Plaintiff's Exhibit No. 29 for identification.)

Mr. Strayer: May it be stipulated that that is a contract for the sale of the Johnson and David timber.

Q. Refresh your memory if you like, Mr. Stegmann. It is correct, is it not, that \$5,300 was the sales price of the timber? [570]

A. Yes, that is what is written here.

Q. All right now, was the whole \$5,300 paid to the Parkers when you received it from the McCormick Lumber Company?

A. I am not sure. I believe it might have been. That is, I mean I am not positive.

Q. Did you receive that all at one time or in installments?

A. This was, I think, all at one time.

(Testimony of Walter Stegmann.)

The Court: I do not recall how much was paid for the property originally by Mr. Stegmann.

Mr. Strayer: I am sorry, I didn't hear your statement.

The Court: How much did he pay for that?

Mr. Strayer: According to the checks, he paid \$2,850 for the property, and the endorsement on the note indicates in addition to that \$150 interest.

The Court: Who paid for the property that was sold to McCormick Lumber Company?

Mr. Strayer: Mr. Stegmann paid them by checks written and debited against Mr. Parker's bank account.

The Court: For how much?

Mr. Strayer: \$2,850. That amount is endorsed on the back of the \$10,000 note. Then there is added to that \$150 interest, or a total of \$3,000.

The Court: \$5,300 was the sales price of the timber? [571]

Mr. Strayer: Yes.

Q. (By Mr. Strayer): If I can go back for just a moment, Mr. Stegmann, to the \$23,000 note in November, 1950, you mortgaged certain property to Mr. Parker. Where was that property located at that time?

A. Well, I don't remember exactly. It seems like I had some stuff up in the Tillamook country, some logging equipment, and it seems like there might have been some still at Gopher Valley. I am not sure.

Q. You mortgaged, as I recall, you mortgaged,

(Testimony of Walter Stegmann.)

was it a Willamette yarder, yes, a Willamette yarder, and an Austin-Western road grader together with certain tackle, I gather from the mortgage. Do you remember where the yarder was and where that road grader was?

A. Well, I am not—gee, that has been so long ago I am not positive just exactly where it was, but that is where I thought it was.

Q. Was it in your possession? A. Yes.

Q. And being used on one of your logging jobs?

A. Well, I did sometimes rent them out, some equipment, so I am not positive whether—I mean, I may have been using it at that time or may not have been using it at that time.

Q. What was the value of that equipment at that time? [572]

A. Well, I don't know. It entirely depends on the man that was going to use it. I mean, as for me, I thought it was around twenty to twenty-five thousand dollars.

Q. What was the value of the yarder?

A. Well, I would say it was probably well over \$20,000.

Q. And the grader?

A. It would run, oh, three or four thousand dollars, I imagine, if you had——

Q. How long had you had that equipment?

A. Well, some of it had been quite a little while. I mean, I don't remember exactly when I acquired it.

Q. How much did you pay for it?

(Testimony of Walter Stegmann.)

A. That I don't remember.

Q. Whom did you buy it from?

A. Some of it I had bought from the Willamina Lumber Company equipment; some of it I bought from other loggers. I just wouldn't remember just which, just where I did get it from.

Q. How many similar pieces of equipment like that did you have? Now let us take first yarders. How many Willamette yarders did you have?

A. I had even built up one of them, I mean, so I don't remember which one it was. It seemed like I may have built this one. I don't remember.

Q. Was this, by any chance, a yarder that you bought [573] from Mr. Payne?

A. No, I don't believe so, no.

Q. You have no idea where you bought it or how much you paid for it?

A. Well, I bought quite a few, I mean not quite a few but several of them, and there was several of them I had bought and converted. What I mean is, they were large machines and had been converted, and put motors on them.

Q. What did you do with the equipment? Where is it now?

A. Well, as I remember this particular one, it seemd there was one that a tree had fell on and ruined the motor of it. I believe it was this one.

Q. On the yarder, you mean?

A. Yes, on the yarder.

Q. Did you have insurance on it?

A. No, I didn't have any insurance on that.

(Testimony of Walter Stegmann.)

Q. Was it worth anything after that?

A. It seemed like it wasn't worth too much because it seemed like I sold the elevator and took some of the rig that wasn't worth as much as it would have been altogether.

Q. How much did you get for it?

A. Well, I couldn't say exactly.

Q. What happened to the grader?

A. Well, I still have the grader. [574]

Q. Where do you have that located?

A. I don't know just exactly where it is located. I have loaned it to my brother.

Q. Didn't you say in your deposition, Mr. Stegmann, that you had sold all of your equipment and had nothing left but a power saw?

A. I thought I had sold it all, but, as I remember, it seemed like I hadn't sold this piece, I don't believe.

Q. That grader is now down with your brother, you say?

A. I don't know just exactly where it is at, but I think it is.

Q. How long has it been since you have seen it?

A. Well, it has probably been right close to a year.

Q. Couple years? A. A year, I imagine.

Q. A year?

A. Maybe not. I don't remember exactly.

Q. Now, on the \$10,000 note you mortgaged two

(Testimony of Walter Stegmann.)

Carco towing winches and one dozer blade. Now where were those located when the mortgage was given?

A. I can't remember exactly because I had stuff at several places, and I don't remember which particular piece was where.

Q. How much had you paid for that equipment?

A. Well, I couldn't tell you exactly how much I had paid [575] for it. Some of it had been taken off of other equipment.

Q. Do you know who that you had bought it from?

A. Well, I don't remember that either.

Q. Where is today?

A. Well, I have sold some drums and I think a dozer blade or so, yes.

Q. What? A. Yes, it was sold.

Q. To whom did you sell it, and how much did you pay for it?

A. I don't know exactly how much it was that I did receive for it, I mean, just offhand.

Q. Who bought it?

A. It seems like there were—there was a fellow from southern Oregon come up and got one of the drums. I don't remember.

Q. Do you know who that was?

A. I don't even remember his name.

Q. Who bought the rest of it?

A. Well then, there was another logger, I believe he bought a drum and a blade together, but I am not sure.

(Testimony of Walter Stegmann.)

Q. Do you know who that was?

A. I can't remember his name.

Q. That is all gone now? A. Yes. [576]

Q. You cannot give us the name of anyone who bought it or how much you paid for it?

A. I can't remember offhand, no. I think I would have had, as I remember, some slips of paper on that, but I can't locate those.

Q. Did you pay any personal property taxes on that equipment?

A. Well, I don't know whether there was or not. I just don't remember that.

Q. Did you ever list it for assessment with the County Assessor?

A. Well, I think he just come around and looked to see what you had or, as I remember, I don't know.

Q. But you never filed any list with the County Assessor listing this particular equipment?

A. Not that I remember.

The Court: Were there two mortgages, one for ten thousand and one for twenty-two thousand?

Mr. Strayer: That is right, your Honor.

The Court: To whom is the ten thousand dollar mortgage payable?

Mr. Strayer: To Mr. Parker.

The Court: Was that recorded, that ten thousand dollar mortgage?

Mr. Strayer: No, it was not. [577]

Mr. Krause: Neither one.

(Testimony of Walter Stegmann.)

Mr. Strayer: Neither one was recorded, neither the \$22,000 mortgage nor the \$10,000 mortgage.

The Court: Was the \$10,000 mortgage given to secure advances?

Mr. Strayer: Yes.

Q. (By Mr. Strayer): Now, did you ever list this equipment on the depreciation schedule in your income tax return, Mr. Stegmann?

A. Well, I don't remember. Some of it was old equipment and had been depreciated out, and I think some of it was. I don't remember how the tax man figured it out.

Q. Well now, can you give us any idea of how much money you owed on November 20, 1950, when you negotiated this loan from Mr. Parker? Do you have any idea what your net worth was on that date? A. No, I don't remember exactly.

Q. Do you have any idea what your net worth was from May 31, 1951—is that the date—yes, May 1, 1951, when you made this \$10,000 credit arrangement? A. I can't remember.

Q. Do you have any idea what your net worth was on August 13, 1951, when you took the option from Mr. Winans?

A. Well, I don't quite understand how you mean that. [578]

Q. You know what net worth is, don't you, Mr. Stegmann, balancing your assets on one hand and your liabilities on the other? Let us take August

(Testimony of Walter Stegmann.)

13th, for example. How much money did you owe at that time to various different people?

A. Well, I don't, right offhand I couldn't say. In other words, I don't know. I didn't think I owed very many.

Q. What did you have in the way of assets at that time? What did you own? To start out with, you had two automobiles, didn't you, one in your name, one in your wife's name? Both mortgaged, were they?

A. I think I was paying for them still on a contract.

Q. What other property did you own at that time? A. What time did you say?

Q. August 13th, 1951.

A. Well, as I remember, I still had this land. We did, still have this land at Pea Vine.

Q. At what value?

A. I don't know just what value it would be.

Q. All right, what else?

A. Well then, I had the pickup.

Q. Was that registered in your name or your father's name?

A. I just don't remember that, I don't [579] know.

Q. What is that?

A. I say, I just don't remember whether it was or not.

Q. Who did that belong to?

A. Well, it belonged to me.

Q. You had bought it?

A. It belonged to the family then threw a little

(Testimony of Walter Stegmann.)

interest in it, and I bought the interest out, but I don't know who it was registered to.

Q. How much was it worth?

A. Around four or five hundred dollars.

Q. All right, what else?

A. Well then, I had some money, as I remember, I got from this note, and this \$10,000 note that I had paid off on.

Q. Well, you had no money on the ten thousand note, did you, Mr. Stegmann?

A. Well, as I remember, I could write checks up to \$10,000 on it.

Q. Well, had you done that? I mean, had you cashed checks on the ten thousand loan arrangement and had the money? A. Oh, no.

Q. What you mean is you had other credit backing; is that right?

A. Yes, that is what I thought. [580]

Q. How much did you have left of the \$22,000 on August 13th? I will put it this way. How much money did you have on August 13th, 1951?

A. Well, I just don't remember exactly.

Q. Well, give us an estimate?

A. Well, I couldn't even do that because if I would buy something, why, I would take some money out, and if I would sell something I would put it back so I couldn't.

Q. Was your financial condition such that you could have swung a hundred thousand dollar timber deal?

Mr. Ryan: I object to the relevancy of that, your Honor.

(Testimony of Walter Stegmann.)

The Court: Objection overruled.

Mr. Strayer: I am sorry. I didn't hear.

The Court: Objection overruled, but I think the answer is obvious.

The Witness: I didn't quite get the question. What is the question?

Mr. Strayer: Will you read it?

(Question read.)

The Witness: You mean that I could pay a hundred thousand dollars for a timber deal?

Q. Yes.

A. Well, no, I couldn't have paid cash money for one, no. [581]

Q. Did you have enough money to make a thousand dollar down payment on an option?

A. I believe I had that much cash.

Q. Where did you keep that cash?

A. Well, I had it in this—I had it in a deposit box.

Q. This pin box that you carried around with you?

A. Well, I had it wherever we were living, yes.

Q. At that time you were living in Hood River—you were in The Dalles, I should say. You kept it in your apartment there in The Dalles?

A. Yes.

Q. Did you have enough money in that box so that you could have made a four thousand dollar payment at the time of the Election to Purchase?

A. Well, I just don't know. I just couldn't tell you exactly.

(Testimony of Walter Stegmann.)

Q. You have no idea at all; is that right?

A. That is right.

Q. Now, isn't it a fact, Mr. Stegmann, that at the time of your deposition, at the time your deposition was taken, first deposition on April 26, 1952, that at that time you testified that when you received this \$25,000 check from Mr. Parker on August 13, 1951, that you cashed that check and took the money in cash?

A. As I remember, in the deposition I testified to that [582] it was purely from memory over a long time ago, and I am able to state more now at this time that what—I believe I am more correct.

Q. Well, it is a fact, isn't it, that you had first testified in your deposition that you had received that \$25,000 from the bank in cash very shortly after you got the check; isn't that right?

A. Well, I was probably very much confused after a long session of talk. I mean, there was questions that I wasn't able to think very clearly, and I was confused, that I did have cash before, got cash when I got the note, I give him the note, that I was taking into consideration it was all cash. I paid him back for the cash.

Q. Well, you are giving me an explanation of why you testified, but all I want to know is—and you can explain it in any way you want to—but it is a fact, is it not, that you at first testified that you had received the \$25,000 from the bank; isn't that right?

A. If that is what it said, that is probably what I said.

(Testimony of Walter Stegmann.)

Q. Well, we had better get the deposition out.
Mr. Buell: Number 21.

Q. (By Mr. Strayer): Will you refer, Mr. Stegmann, to page 69 of your deposition?

A. What page was that?

Q. Page 69. Read over page 69, if you will, Mr. Stegmann, [583] and then tell me if you did not say that you received a check for \$25,000 and cashed it at McMinnville?

A. What was that again?

Q. Would you read the question, please?

(Question read.)

A. Well, I received a \$25,000 check for my assigning of the option to Mr. Parker.

Q. But you did not cash it, did you?

A. No, I figured it was the same as cash because I paid off this note which I had received cash for.

Q. All right, did you not testify on page 69 that you cashed the check at the bank at McMinnville?

A. Well, I was very much confused there.

Q. You did testify that way, though, did you?

A. If I did, that must have been what I said.

Q. You do not deny that that is the way you testified? A. No.

Q. All right now, isn't it also a fact that immediately following you were questioned about what you did with the \$25,000 in cash which you got with that check; that is right, isn't it?

A. Which page is that on?

(Testimony of Walter Stegmann.)

The Court: Page 70.

Q. (By Mr. Strayer): You do not remember yourself about your testimony on that? [584]

A. Well, I remember reading that, and I can't quite follow you here.

Q. Do you remember testifying that you used part of the money to buy some timber from a man by the name of Clay Brown?

A. Well, I think, as I remember, that was one piece. There were several pieces, you know, that I had a chance to buy.

Q. Will you look on page 75, if you will, Mr. Stegmann, reading these questions and answers at the top of the page:

“Q. You say you spent some of this money on other timber that you acquired? What timber is that? A. Some in Southern Oregon.

“Q. Where is the tract in Southern Oregon located? A. Around Grants Pass.

“Q. Whom did you purchase it from?

“A. Clay Brown.

“Q. How much did you owe for it?

“A. I don't remember the exact amount now.

“Q. Approximately how much did you pay for it?

“A. I think the figure was \$12,000, I believe.

“Q. Did you pay cash for it?

“A. Yes.” [585]

Q. Did you give that testimony?

A. Well, I see it here. Yes, I must have. As I

(Testimony of Walter Stegmann.)

remember, it was—I was supposed to pay that much cash for it if I would buy it, and that is what I was under the impression.

Q. Did you actually buy some timber from a man by the name of Clay Brown?

A. No, I was looking at several pieces of timber.

Q. But you did not actually buy it from him?

A. No.

Q. And you did not actually pay him \$12,000?

A. Well, if I didn't buy it I didn't pay him for it.

Q. You never have paid any money to Clay Brown?

A. No, that was supposed to be cash, and as I remember the contract there, I mean, there was an agreement. There was supposed to be some cash paid on the timber.

Q. But you never did pay it?

A. No, I think that was one of them, that I had several of them, I had chances to buy but I didn't acquire.

Q. I am glad you told me that because we have been beating the bush trying to find Mr. Clay Brown. We cannot find him. You never bought any timber from him?

A. Well, there was a man by that name I have been trying to find. What I mean, I did talk to him about buying timber. [586]

Q. But you did not buy any timber from him; is that right? A. No.

Q. We can consider that a closed chapter then.

(Testimony of Walter Stegmann.)

You spent none of the money in buying timber from Clay Brown, right? A. That is right.

Q. Why was it, Mr. Stegmann, that you had carried that check around for four or five weeks without cashing it, that \$25,000 check?

A. How long did you say it was?

Q. Do you remember the \$25,000 check?

A. Yes.

Q. You never did cash it; you finally gave it back to Mr. Parker about September 20th; did you not?

A. I believe that is what it—I mean, as I remember from—this thing, it was about September 20, I think it was, in the evening that I paid him that for his notes.

Q. Why didn't you cash the check?

A. Well, I really don't remember. It seems like I was pretty busy, and I didn't get into the bank in time.

Q. Didn't you need that money?

A. I had, as I remember, I must have had some cash left that I didn't need right away, and I felt that his check was good. There was no hurry to cash it. [587]

Q. You gave it back to Mr. Parker on September 20th for what reason?

A. Well, I don't exactly remember the real reason that—I did give it back, the reason for paying for the notes, but, as I say, as I remember the conversation in, over this, why, I don't know

(Testimony of Walter Stegmann.)

whether I had talked to him previously on the telephone or I just went over to his place, and that seems to be—it seems like—I was going to ask him if I could purchase more timber and keep the money to purchase some more timber or whether I should apply this to the notes, and I believe that he seemed kind of irritable and from his impression and all that I said, “Well, I will just, maybe I would just as well pay off the notes and have it cleaned up.” So I endorsed the check back to him in payment of those notes.

Q. Was he complaining then that you had sold him some timber to which the title was bad?

A. Well, I don't remember too much of that discussion. It seemed like he was pretty mad. I mean, he was kind of peeved. He does not say much when he is mad, as I remember.

Q. Your notes were not due at that time, were they?

A. No, but they were coming due fairly shortly. I mean, it was in November which was not too long away.

Q. Well, you had two months to go on the \$22,000 note. [588] Didn't you have any use that you could put the money to during the two months time?

A. Well, that was why I went to ask him about it. I felt that it was a, probably an obligation to see whether I could use his money. I mean, there was really no reason why I should have asked him.

(Testimony of Walter Stegmann.)

Q. Mr. Stegmann, did you pay the balance due on the \$22,000 note when it came due?

A. What was that?

Q. Have you paid the balance due on the \$22,000 note?

A. What was the balance now as I remember it.

Q. You still owe money on it now, don't you, today?

A. I was always under the impression, I mean, as I understand now, that I am, yes, owing some money, but I was under the impression all the time, I thought it was twenty or twenty-two thousand dollars, I thought it was twenty thousand dollars, and I thought that it was just about paid off when I paid him. At that time, as I remember, they didn't tell me that I did owe them any balance on the thing.

Q. Have you received some demands from Mrs. Parker that you pay the balance?

A. There could have been one time, it seemed like I might have got a letter, and I don't remember exactly.

Q. Didn't she write you a letter and ask you to pay it? [589]

A. There may have been a letter stating that I was owing some difference on the notes due yet.

Q. Didn't she ever talk to you about it and ask you to please pay it?

A. I don't recall. It is possible.

Q. Well, did you have the money to pay it?

A. Well, I didn't—it is possible that I didn't

(Testimony of Walter Stegmann.)

see the note to know just exactly how much it was for and know whether I did actually owe it or not.

Q. Mr. Stegmann, when you got that check for \$25,000 did you have some understanding with Mr. Parker that that would be applied on the note?

A. You mean when he give it to me?

Q. Yes.

A. No, I don't believe he mentioned anything about it being applied on the note. As I remember though, the notes were not due yet.

Q. There was not any conversation about giving you credit on your notes at all at that time?

A. Well, I don't remember any being said.

Q. Do you want us to understand that you were actually to make a profit out of that sale of the option of about \$20,000?

A. Well, I thought I was going to make twenty-five, but I think I will get kind of a rake-off there just a little [590] bit by having to pay off the four thousand dollars there for the completion of the option.

Q. Well, but that was your agreement; was it not, that you would pay the four thousand?

A. Yes.

Q. You did not object to that, did you?

A. Well, I may have. I don't remember. It seems like I wanted the \$25,000, and he would pay off the \$4,000, and it seems like that he said, well, he thought I should pay off the \$4,000, and I think that is the way he jewed me down on it.

Q. Well then, in addition to that profit on the

(Testimony of Walter Stegmann.)

sale of your option, do you want to be paid for your work of helping survey this reserved area then?

A. Well, this reserved area had to be set out, as I remember, and he wanted me to survey it so I figured that in as much as I would have to pay the \$4,000 I might just as well charge him a fair amount for surveying out these lines.

Q. Did you already know at that time that you had been cheated out of \$4,000?

A. Well, when all the discussion and the option was signed and he asked me about that, why then, I got kind of thinking about it, and it kind of appeared like that maybe I was only getting \$20,000 for it, I mean, as I [591] momentarily advanced that for it.

Q. Let us see if I understand you. You mean there on August 13th when you assigned the option that after you had assigned the option and put your name on the dotted line and he had given you a check for \$25,000, it suddenly came to you that you had been cheated out of \$4,000 on the payment, and so at that time you gave him a good stiff price on the surveying and that work; is that your answer?

A. Well, he asked me to do the surveying on the reserve area, if I would go up and do that, and it seems like he had rendered at that time, I believe that he had a cruiser, or something, or that he might have a cruiser to go in and look at the timber if I would show him the corner.

Q. That was Mr. Kenney?

Mr. Jaureguy: I do not think the witness used

(Testimony of Walter Stegmann.)

quite as harsh a term as "cheated." That was your invention.

Mr. Strayer: Well, Beacon, doesn't that mean cheated?

Mr. Jaureguy: It was bad enough what he said.

Mr. Ryan: He did not use quite as harsh a term as you, "charged him a good stiff price," either.

Mr. Strayer: I think this is cross-examination of an adverse party, your Honor. He can straighten it out.

The Court: Proceed.

Q. (By Mr. Strayer): What I am trying to find out—I do not need to put any terms on what you are thinking, Mr. Stegmann— [592] but you had a feeling that Mr. Parker had taken advantage of you to the extent of \$4,000; is that right?

A. Well, I kind of felt that I had in my mind I would like to have got about \$25,000, and after I got to thinking about my paying \$4,000, why, it would actually be \$20,000.

Q. All right then, you gave him a price on the survey of how much money?

A. Well, I don't remember what it was. Seemed like it must have been around \$50 a day, something like that, or seventy.

Q. Did you give it to him that way, or did you give him a fixed sum?

A. Well, I don't remember exactly. I noticed there was a fixed sum, I mean, was paid, and it is

(Testimony of Walter Stegmann.)

possible that I just could have roughly estimated the time it would take and figured it out.

Q. Did you hear Mr. Parker's testimony the other day that you agreed on \$362 payment?

A. I believe that was the figure.

Q. That was the agreement you made there on the night of August 13th?

A. Well, he wanted me to show this cruiser one corner, and I think there was some additional for that.

Q. That was \$20 additional; was it not? [593]

A. I don't remember the exact way it figured out, but it seemed like it was \$380 some dollars.

Q. All right, that agreement was made there on the night of August 13th; is that your testimony?

A. I am pretty sure it was.

Q. How did you arrive at your \$382? \$20 was for showing the cruiser, the time, so you had \$362 for your surveying. How did you arrive at that odd figure?

A. Well, I think it could have been that I wanted him to pay for my gas going up there, too, so I just added on \$2 for gas for good measure.

Q. So you said, "I will charge you \$360 plus \$2 for gas"?

A. I believe it would have been. I don't remember exactly.

Q. How did you arrive at the \$360. How many days at \$50 a day did you figure?

A. I don't remember whether it was \$50 or \$70 a day. It seemed like it was—I figured it prob-

(Testimony of Walter Stegmann.)

ably would take five or six days. I don't remember which it was.

Q. As a matter of fact, that was a pretty stiff price for the work that you did; was it not, Mr. Stegmann?

A. Well, it is a fair price, yes.

Q. A fair price, you say?

A. Well, I think so.

Q. How many days did you spend on the work?

A. Well, I can't remember exactly how many days it was [594] up there.

Q. It was not more than two or three days at the most, was it?

A. It must have been four or five days. I believe it was. I am not sure though exactly.

Q. Well now, I think you received that check in September, on September 10, 12, or 14, 1951, and you did not cash that check until December, 1951. How does that happen?

A. Well, I can't really give you any definite reason for not cashing it, only that I may have had enough cash that I thought of using the cash I had, and I felt that the check would be good, and in the event that I might lose it or something, why, it is possible that I could carry it around.

Q. But you had been carrying around \$22,000 in cash.

A. I didn't always carry it with me, no.

Q. I see, you did not need the money so you did not cash the check. All right.

(Discussion between counsel off the record.)

(Testimony of Walter Stegmann.)

The Court: Is this a new tack?

Mr. Strayer: Yes.

The Court: Is this a new line?

Mr. Strayer: Yes.

The Court: It is five o'clock. We will adjourn until nine-thirty tomorrow morning. [595]

(Evening recess taken.) [596]

(Friday, January 23, 1953, the trial was resumed at 9:30 a.m., and the following proceedings were had.)

The Court: I think Mr. Stegmann was on the stand.

WALTER STEGMANN

recalled, was examined and testified as follows:

Direct Examination

(Continued)

By Mr. Strayer:

Q. Mr. Stegmann, have you done any work for Mr. and Mrs. Parker since the Winans transaction?

A. Have I did work for—no.

Q. Have you received any money from them since the Winans transaction? A. No.

Q. Have you received any credit on any of your notes to the Parkers since the Winans transaction?

A. I would like you to explain that.

Q. You say that you have received no money. Have they given you any more credit on any of your notes since you turned back that \$25,000 check? A. Well, I don't—no.

(Testimony of Walter Stegmann.)

Q. What is that? A. No. [597]

Q. Have you shown any property that Mr. Parker had for sale since the Winans transaction?

A. No.

Q. Have you made any effort to sell any property for the Parkers since the Winans transaction?

A. No.

Q. Do you recall the Cottrell sale when Mr. Parker bought the Cottrell timber up in Washington in February, 1951?

A. Well, I don't remember the name distinctly. I remember some timber in Washington.

Q. That was the timber that was sold to the Weedman Lumber Company. Does that bring it back to you?

A. I remember showing the Weedman Lumber Company some corners on some property.

Q. Didn't you do anything no more than just show them the corners?

A. I just showed them the corners and approximate lines.

Q. Did you do the same thing with Mr. Rutherford? A. I do not remember.

Q. Do you remember taking Mr. Rutherford up there. Didn't you show the Cottrell property to him? A. I don't remember.

Q. Were you paid by the Parkers for that service? A. No.

Q. While you were over there at Hood River you bought a [598] piece of timber from Mr. Walker; did you not? A. Yes.

(Testimony of Walter Stegmann.)

Q. And later sold that timber to the Walton Lumber Company; is that right?

A. I believe it was, yes.

Q. Under that arrangement with Mr. Walker, you were to pay him some \$2,000 as the timber was cut; is that right?

A. Can I see a copy of the contract to refresh my memory on that possibly?

Q. Yes.

(Photostat of Timber Agreement dated June 22, 1951, marked Plaintiff's Exhibit No. 30 for identification.)

Mr. Jaureguy: I think the record should show that Exhibit 30 was also an exhibit attached to Mr. Stegmann's deposition.

Q. (By Mr. Strayer): Is Exhibit 30 a copy of a contract you had with Mr. Walker, Mr. Stegmann? A. Well, it appears it is, yes.

Q. That requires you to pay Mr. Walker \$2,000; does it not? A. To pay Mr. Walker \$2,000?

Q. Yes. A. No.

Q. How much did you agree to pay Mr. [599] Walker?

A. As it was, the purchase price is so much per thousand.

Q. Oh, you were to pay him so much per thousand as the property was logged? A. Yes.

Q. Well then, you sold it to the Walton Lumber Company for \$2,000; is that right?

(Testimony of Walter Stegmann.)

A. I believe it was about that.

Q. Have you ever paid Mr. Walker for the timber?

A. Well, they sent me—I think I have.

Q. Pardon? A. I think I have.

Q. When did you pay him?

A. It has not been too long ago.

Q. Recently, you mean? A. I believe it is.

Q. Did you pay that by check?

A. I don't know, I think my wife sent off the payment to him.

Q. Did you also negotiate for the purchase of some timber from Mr. Marsh up around Hood River or The Dalles? A. Yes.

Q. Which Mr. Marsh was that?

A. I believe his name was Bill Marsh.

Q. Is that the same Mr. Marsh that Mr. Parker was dealing with? [600]

A. Oh, I don't know.

Q. You never made a deal on that timber, did you? A. No.

Q. Going back to the Walker timber for a moment, Mr. Parker came out and looked at that timber; did he not? A. The Walker timber?

Q. Yes.

A. I don't remember whether he ever did or not.

Q. Well, didn't you say in your deposition that he had looked over the timber and decided not to buy it?

A. Well, I may have said that, but there was a

(Testimony of Walter Stegmann.)

logger wanted to buy it, and I think he was going to finance the logger. I believe it was Mr.——

Q. In February of 1952 you bought some timber up in the state of Washington together with a Mr. Kaltenberg; did you not?

A. Mr. Kaltenberg, I think located it for me.

Q. You bought it together and split the profits; did you not?

A. I paid him some for finding it.

Q. You gave him half the profit, didn't you?

A. I don't remember whether——

Q. Who financed that deal?

A. I paid for the timber.

Q. Was it your money? [601] A. Yes.

Q. Did Mr. Parker have anything to do with it?

A. No.

Q. Didn't you tell Mr. Kaltenberg that Mr. Parker was financing you? A. No.

Q. Then some time in 1951 didn't you get an option from Mr. A. L. Kennedy on some property near Meadow Lake?

A. I was trying to deal on some property.

Q. That deal fell through because of some disagreement over the cruising; did it not?

A. I think it was.

Q. Was Mr. Parker financing you on that deal?

A. No.

Q. Who was financing?

A. A man by the name of Mr. Hutchins was going to, and then he didn't.

Q. What is Mr. Hutchins' first name?

(Testimony of Walter Stegmann.)

A. I don't remember what his first name is.

Q. Is it Roy Hutchins?

A. I don't know. It is possible.

Q. Well, is Mr. Hutchins, by any chance, the father of Mrs. Parker?

A. I don't know that.

Q. You don't know that? [602] A. No.

Q. Now, in the summer of 1952 do you recall showing a piece of Mr. Parker's property to Paul Wardell?

A. Mr. Parker's property to Paul Wardell?

Q. Yes.

A. What was that date again?

Q. What is that?

A. What was that date again?

Q. Well, some time in the summer, spring, summer, fall of 1952? A. No.

Q. Did you ever show a piece of property owned by Mr. Parker, the west half of the southwest quarter of section 12, Township 4 South, Range 6 West?

A. I don't know that description.

Q. Well, it is out in the vicinity of the Pea Vine.

A. Oh, I had some property up on Pea Vine.

Q. Yes, but I am not talking about that, Mr. Stegmann. I am talking about some land that was owned by Mr. Parker up there which you showed to Mr. Paul Wardell as a prospective purchaser. Don't you recall that? A. No.

Q. Well, maybe this will bring it back to you. Don't you recall some difficulty? You showed him

(Testimony of Walter Stegmann.)

the property, and later on it developed that somebody had moved a [603] quarter-corner marker a quarter of a mile in one direction so that the property that you were looking at, while it apparently was Mr. Parker's actually it belonged to the Government? A. No.

Q. You don't remember any such incident as that? A. I know of no such incident.

Q. Mr. Stegmann, when was your first conversation with Mr. Parker regarding this Winans timber?

A. I believe—I am sure it was on a Sunday. It would be—I remember on August 12th. I think it was, that was a Sunday, wasn't it?

Q. August 12th, 1951, was the first time you ever talked to Mr. Parker about the Winans timber? A. Yes.

Q. How long had it been before that that you talked with Mr. Parker at all?

A. I don't remember.

Q. Had it been a month or a few days, or approximately——

A. I would say it was quite some time.

Q. You had been up in Hood River how long at the time, August 12th? As I understand it, August 12th you were back in McMinnville, but you had been up and back for some time, had you?

A. Yes. [604]

Q. Had you been in contact with Mr. Parker during the time you were in Hood River?

A. No.

(Testimony of Walter Stegmann.)

Q. When did you first talk to Mr. Winans about the property?

A. I can't recall the exact date. It was probably the later part of July or first part of August, 1951.

Q. When did you first go down to talk over business with Mr. Winans about buying it?

A. Well, it must have been within a few days of the time.

Q. About how long before you took the option did you get down to discussing price?

A. Well, it was in a matter of a few days.

Q. Can you give us the date how long before August—you took an option on August 11. About how long before that?

A. It could have been a week probably.

Q. Now, your telephone number over at Mc-Minnville at your home was 4984; was it not?

A. Well, I don't remember exactly, but I think it might have been.

Q. Mr. Parker's telephone number up in Vancouver was 41951; was it not?

A. I don't remember the number.

Q. I will ask the bailiff to hand you an exhibit marked 57-B. I will ask you to look over the first two sheets of [605] that exhibit and state if they do not reflect a telephone call from you to Mr. Parker on August 6th and a call from you to Mr. Winans also on August 6th?

A. Well, I don't remember making either one of these calls.

(Testimony of Walter Stegmann.)

Q. You have no recollection of them?

A. No.

Q. I think this exhibit also indicates a call on August 12th to Mr. Parker and one on August 14th to Mr. Parker, one on August 17th to Mr. Winans. Do you remember any of those calls?

A. It is possible that I—my wife may have called Mr. Parker on the 12th, or Mrs. Parker. I was supposed to tell them whenever I wrote a check against this \$10,000 note who the check was made to and where it was, what number was on it.

Q. Well, that would not have happened in August, would it, August 12th? That was before you had assigned your option, and you had no discussion with the Parkers about a credit on your \$10,000 note at that early date, did you?

A. What was that now?

Q. Would you read the question?

(Question read.)

A. I don't quite understand, a credit on the—

Q. Well, I will withdraw the question. [606]

Mr. Ryan: I think he was going to answer that question.

Mr. Strayer: I thought he said he didn't understand it. I do not know as it is too important anyhow.

Q. I call your attention, maybe this will bring the matter back to your mind on these telephone calls, according to this record there was a call from

(Testimony of Walter Stegmann.)

the home of Mr. Parker's residence on August 6th at 7:15 in the morning and then a call from your home to Mr. Winans' home at 7:50 at the same morning on August 6th.

A. I don't ever remember those calls.

Q. What, if any, representations did Mr. Winans make to you as to his title of this Lost Lake property?

A. Well, he told me that Ethel Winans owned the property and that he had an insurance, title insurance to it, and that he was going to take the description of the property off of the title policy for the option, and he couldn't locate it, of course. He searched for it, and he took that off of the tax receipts.

Q. Did he tell you anything about the Government's claim to a part of that property?

A. No.

Q. Did he tell you anything about having previously collected from a title company because of the Government's claim to part of the [607] property?

A. No.

Q. When did you first find that out?

A. When I first knew about that was when this lawsuit commenced.

Q. Up until that time you had no knowledge or no information about any defect in title or claim by the Government?

A. No.

Q. Did you ever talk to any representative of the Forest Service about it?

A. No.

Q. I assume from that then that you never told

(Testimony of Walter Stegmann.)

Mr. Parker anything about any defect in title or any claim by the Government?

A. No, I did not.

Mr. Strayer: I believe that is all, your Honor.

The Court: That is all?

Mr. Strayer: That is all.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. What is the earliest date, Mr. Stegmann, that you would say that you had any discussion with Mr. Winans?

A. Well, I would say around the 1st of August or possibly the latter part of July. [608]

Q. Tell us what the circumstances were of your first meeting.

A. Well, I understood he had some timber for sale. I heard about it in town, and I inquired where his place was, and I drove out to his place at Hood River to Dee, Mr. Winans' place. I met him, and I thought the way they described the place, a little service station there, and there was no one about, and I was about to leave, and a man come down from the highway, as I remember, and I asked him if he knew Mr. Winans, I think, and he introduced himself as Mr. Winans.

Q. Where had you heard about his having some timber for sale?

A. Well, I was eating lunch, some little restaurant there in Hood River, and I heard—I didn't

(Testimony of Walter Stegmann.)

know whether they were timbermen or loggers, they had something to do with timber—discussing this property; that he had some very nice timber up there, and he had been wanting to sell it.

Q. What place was that in; do you recall that?

A. Well, it seemed like it had some initials on it, B. and D. or something, B. and B. It was kind of an eating joint.

Q. You were not talking to these people that were talking about it, were you?

A. No. [609]

Q. You just overheard their conversation?

A. Yes.

Q. How did you locate Mr. Winans then?

A. Well, I remembered the name, and I think I inquired at some service station there in Hood River.

Q. How early had you been up there in Hood River County looking for timber, that is, how long before this time?

A. Probably two months, two and a half.

Q. You had been up around there for two to two and a half months?

A. Well, there and The Dalles.

Q. There and in The Dalles. Did you move up there and live at The Dalles about two and a half months before you first talked to Winans?

A. I think I may have been living in Hood River or at The Dalles. I lived at Hood River a short while, and then I moved to The Dalles.

Q. Well, had you had anything to do with

(Testimony of Walter Stegmann.)

Parkers' purchasing this log dump up there at Hood River? A. No.

Q. Although you were up there about that time?

A. Well, I don't know as he was up there. I didn't know he was there.

Q. Well, you were up there though. Two to two and a half months before the end of July would have put you up there [610] about that time, wouldn't it?

A. I think it was in the latter part of May, probably——

Q. That you went up there? A. Yes.

Q. You still maintained your home in McMinnville, however? A. I was trying to rent it.

Q. Well, you went back there occasionally and stayed at your own home during all that time, didn't you?

A. Well, we didn't have any renters there, and I did go back in to take care of the lawn and mow it and water it occasionally.

Q. You stayed there overnight?

A. Sometimes, but not too often.

Q. Now, without ever going to look at this timber that Winans was supposed to have for sale, you went to look up Winans, did you? A. Yes.

Q. Tell us about your first conversation with him.

A. To be exact, I am not sure, but we did talk about—Mr. Winans and I—that he had some property up there for sale, and it had some timber on it

(Testimony of Walter Stegmann.)

and that he did want to sell it, but he had promised it to some other people, and he didn't know whether I would be able to purchase it until he contacted these other people and give them the [611] first opportunity to buy it, as was my understanding.

Q. What did Mr. Winans tell you that he had up there at Lost Lake?

A. He said that he had around, I think it was 60 or 65 acres or somewheres about.

Q. Did he describe it to you any further as to what timber there was on it?

A. I don't remember his describing the exact amount of timber. He seemed to mention that it was a very heavy stand of timber.

Q. You told him you were looking for timber land, did you?

A. I don't remember him describing the exact that I told him I was looking for land with timber on it.

Q. Didn't you tell him, Mr. Stegmann, that you were looking for a place quite a ways from civilization where you could build a fine home?

A. I don't know as I ever did.

Q. How were you clothed when you came up there, in the—just describe yourself, will you, please?

A. Oh, I don't remember what I was wearing at the time.

Q. Would you say that in general you were dressed like a cattleman instead of a logger when you came up to see Mr. Winans?

(Testimony of Walter Stegmann.)

A. I wouldn't say that. [612]

Q. That you told Mr. Winans that you were in the cattle business?

A. I don't know as I ever told him that I was. I told him that I had raised cattle, yes.

Q. But that your business was white-faced cattle? A. No.

Q. You didn't tell him that. Didn't you also tell him that you were not at all interested in logging, knew nothing about logging whatsoever?

A. Oh, I don't know as I told him that. I felt rather foolish that a man of his age, being logging all his life, and telling him that I was a perfectly experienced logger.

Q. It was because of his greater age that you pretended not to know anything about logging?

A. I didn't pretend, no.

Q. Well, Mr. Stegmann, at any rate, you didn't tell him that you wanted this property up there just for a home? A. What was that question?

Q. You did not tell him that you were looking for property just for a home?

A. As I remember, I told him that I was looking for property with timber on it.

Q. Didn't you use the words that you were looking for a private retreat?

A. I don't remember saying that. [613]

Q. All right now, at this first conversation there was nothing said about any price or whether any deal could be made or not?

(Testimony of Walter Stegmann.)

A. Not at the first one, as I remember. I am not sure.

Q. All right now, what did you do about examining the property?

A. He told me, I think, approximately, he did tell me approximately where it was located, and from the description, and I did have Metsker maps of a lot of places in Hood River County. I had been looking at different pieces of timber to purchase, and he told me approximately where it was so I went up to take a look at it.

Q. He had not given you a description; he just told you in general where it was located?

A. Yes.

Q. You went up then, and what did you do, look at it?

A. I don't believe that I got on the property the first time I went up there. I am not sure. He may have showed it to me later, and then I went back. I don't—

Q. Did you say that he may have been up there with you before you signed the option?

A. I believe that him and I did go up there before. I am not positive though on that. It was about the same day.

Q. Of course, you were not talking about—he was not talking about selling anything to you. There was nothing said [614] about any title or ownership at this first meeting?

A. I don't believe there was.

(Testimony of Walter Stegmann.)

Q. You recall particularly that he mentioned that he had about 65 acres there, 60 or 65?

A. I think it was somewhere over 65 or 60, and he give me fractions. I think now, as I remember clearly, 65.88 or something like that.

Q. About when did you see him the next time?

A. Well, it seemed like it was within a few days because he was supposed to know whether these other people were going to take it or not going to take it.

Q. Where did you see him the next time?

A. I believe it was at his little office there in Dee or this side of Dee.

Q. Just a few days after the first visit?

A. I am not clear exactly on the amount of days. It seemed like it was.

Q. Tell us what conversation you had with him on this second occasion?

A. Well, it seems like he had a—he had not known particularly yet whether these people had made up their mind. It seemed like there was one fellow connection with another, and they had a conference back and forth, and that he was not sure, but if he did sell it he wanted—I believe it was on that deed. I am not sure that [615] he wanted \$100,000 for the entire property.

Q. Well, at that time, about this second conversation, during this second conversation he put a price of about a hundred thousand on it; is that correct? A. He may have.

Q. Well, may have, what is your recollection on it, Mr. Stegmann?

(Testimony of Walter Stegmann.)

A. I don't remember whether it was at the second meeting or which meeting it was, but at one time before I bought the option he priced it at a hundred thousand dollars.

Q. You signed the option at a hundred thousand, didn't you? A. Yes.

Q. So there had to be a hundred thousand mentioned at that time. Was there at any of these meetings any discussion regarding the sale of only the 25.88 acres, retaining from three to five acres out?

A. No, he wanted to reserve some acreage there, but as I always thought it was all one piece of property, so much for one piece of property—

Q. You thought it was one piece of property, but you knew that it was two pieces of property; isn't that right?

A. Well, there was 40 acres, and then in one-quarter-section there was 20, a smaller piece was in another quarter-section which actually would be on each side of a line but still [616] would be considered all their property.

Q. They were described as two different tracts whenever you saw them mentioned at all, weren't they?

A. As I believe, there might have been on the tax receipts Lots 1 and 2.

Q. Well now, with respect to the time that you signed the option or that the option was given to you, when did you come to an agreement with him, that is, when was this meeting where you came to an agreement with him?

(Testimony of Walter Stegmann.)

A. What was that again? I didn't get it.

The Court: I think this is a good place to stop. We will take a recess.

(Recess taken.)

Q. (By Mr. Krause): Would you read the last question, Mr. Reporter?

(Question read.)

The Witness: You mean where was this meeting I come to an agreement?

Q. It was when, I think. When did you come to an agreement with him with respect now to the 18th of August—or the 11th of August, the date on which the option was given to you?

A. I don't quite understand you on that question, I mean not clearly.

Q. Well, let's withdraw that question. [617]

Q. You had to come to an agreement as to price and terms. When did you come to an agreement with Mr. Winans as to terms and price?

A. You mean the day?

Q. Well, with respect to the 11th of August?

A. I do know on the 11th of August, I mean that I did take an option from him on the property and that he had the price in there on the 11th of August.

Q. Well, when had you agreed on that price with him?

A. Oh, I imagine we had agreed on that probably a few days before. We had to agree on that.

Q. Probably a few days before? A. Yes.

(Testimony of Walter Stegmann.)

Q. Then what you now say is that you had, you had this first preliminary meeting with him where you did not discuss any price at all and he didn't—he said he was talking to somebody else about it. Then you had another meeting with him where he had not yet, was still not able to talk to you about a price; is that correct?

A. I don't know, he might have mentioned the price, but at that time he still was not able to sell the property to me.

Q. All right then, you had a third meeting some time before the 11th of August in which he gave you a price on it?

A. At some time, yes, he gave me a price [618] on it.

Q. And that was before the 11th of August?

A. I believe that he had, yes.

Q. In your deposition you testified, didn't you, that you only saw him twice prior to the signing of the option? A. In my deposition, yes.

Q. That is, just once before the date of the option, and then you saw him again on the 11th of August. That is what you said in your deposition, didn't you? A. Yes.

Q. But now you think that you saw him at least three times prior to the date of the option?

Mr. Ryan: Without interrupting whatever, he changed his deposition. He did amend that, that there might have been another time.

Mr. Krause: Oh, there might have been another time. Oh, I didn't see that.

(Testimony of Walter Stegmann.)

Q. Well then, in the deposition you thought there might have been two times where you talked to Mr. Winans before the day on which the option was signed, but now you think there were three?

A. I don't remember the exact amount of times. It has been so long ago that I had seen him. It was a very few times before the option was signed.

Q. Besides seeing him you telephoned him several times, too, to ask him whether he was ready to talk to you about [619] that sale?

A. I don't remember any telephone conversation. It is possible though.

Q. Actually, you saw him four or five times at least before the day on which the option was signed; isn't that correct?

A. I can't remember just the exact amount of times I had seen him, but it was very few times.

Q. Well, that time you ran him down in Hood River don't you remember that you found him down in Hood River and you discussed the matter right there where your cars were parked?

A. Well, I remember happening to stop for him and meeting him at Hood River because he was getting out of his car right in front of me, and the streets are very narrow there, and I do remember stopping, and probably I may have talked for just a short while. I was parked in the middle of the street.

Q. Well, on that same day you had been out to his home first, and they had told you where you

(Testimony of Walter Stegmann.)

might be able to find him, and then you trailed him into Hood River; don't you recall that?

A. I don't remember that.

Q. Well now, prior to the time of the signing of the option, yes, well, including the day on which the option was signed, [620] what discussions did you have with Mr. Winans regarding the title?

A. All I know is that he had his sister, Ethel Winans had owned the property, deed to the property, as I understood him, and that they had a title insurance or title policy which he tried to search for and could not locate, and that is all I know.

Q. Well then, all they told you was that they had a title policy; is that right?

A. Yes, he searched for it and tried to find it and show me.

Q. He didn't say anything about whether there were any defects in the title or whether the title was good?

A. No, only I know that they had—he said Ethel Winans had a deed to it, as I know, and that they had a title policy for it.

Q. What section was this land in?

A. Why, it was in section 16.

Q. And what are sections 16 and 36 ordinarily in Oregon?

A. They are school lands, as I understand it.

Q. School lands. Do you remember having discussions with him about this being in a school land section?

A. Well, in section 16, he may have mentioned it

(Testimony of Walter Stegmann.)

was a school land, but I don't remember discussing.

Q. You mentioned repeatedly that it was a school land [621] section; don't you recall that?

A. You mean to him?

Q. Yes, with him while you were talking about buying the property? A. I don't remember.

Q. You don't remember. Now, tell us just how you arrived at this price at a hundred thousand?

A. I didn't arrive at the price; he did.

Q. You made no counter-proposal?

A. Well, I had looked at the timber, as I remember, when—and I figured it was well worth that much and more.

Q. So when he put a value of a hundred thousand on the property you made no counter-proposal?

A. That, I don't remember.

Q. You don't remember.

A. I may have said that it seemed like a lot of money, but that was all.

Q. Because of the fact that you had looked at the timber up there, you didn't haggle about the hundred thousand dollars at all? A. No.

Q. Now, Mr. Stegmann, isn't it a fact that your first discussions with Mr. Winans involved only the 25.88 acres less some three to five acres that were to be held out? A. No. [622]

Q. You didn't talk to him about buying just one part of the 25 acres?

A. I always understood that the whole piece of property, the 65 acres or 80, what percentage they wanted, it was all in one piece, and that they wanted

(Testimony of Walter Stegmann.)

to reserve a small portion of it, and that was the way I understood it.

Q. Isn't it a fact, Mr. Stegmann, that your first discussions involved only the payment of \$80,000 for the property adjoining the lake, that is, the 25.88 acres less the part to be retained?

A. No, I was, always considered it as one piece of property.

Q. Well, all right. Then your answer is now that there was no discussion on that; is that right?

A. No.

Q. Is that correct?

A. What was that again now?

Mr. Jaureguy: He said "No" in a loud voice when you first asked him.

Mr. Krause: All right, may we have that in the record? Is that correct; that is what he did say?

Mr. Ryan: He said "No."

Mr. Jaureguy: It is already in the record.

Mr. Ryan: He said "No."

Mr. Krause: What I heard, that he always considered [623] the piece as one piece.

Q. (By Mr. Krause): All right, Mr. Stegmann, there was no discussion then regarding an addition of that 40 acres, the 40 acres lying behind the 25?

A. No.

Mr. Ryan: I object to that question. I think there should be some clarification, what you mean by an addition of acres behind, 40.

The Court: I know what he means.

(Testimony of Walter Stegmann.)

Mr. Ryan: I guess I didn't. I am sorry, your Honor.

Q. (By Mr. Krause): Mr. Stegmann, do you recall telling Mr. Winans after he had told you that they couldn't sell the 40 acres and give a good title to it that you wanted whatever title they had so no one else could come in there and denude the hillside and spoil your home site in front there?

A. I never did tell him anything like that.

Q. You didn't; that some other logger would come in and cut the trees down on the 40 acres and ruin that as a recreation site. You had no such discussion? A. No.

Q. Isn't it a fact, Mr. Stegmann, that upon your insistence Mr. Winans finally put a price of \$20,000 on their interest or right and title to the 40 acres?

A. No, all I know, that he wanted a hundred thousand [624] dollars for this property they had up there, this 65.88 acres, and that was all I knew.

Q. At one time through negotiations with him you discussed buying just the 40 acres and not buying the 25 acres; do you recall that?

A. No, I considered it always one piece of property.

Q. Well, maybe you do not quite get my question. After the option had been signed did you and Mr. Winans have a little difficulty agreeing upon what part of it was to be withheld or reserved?

A. Well, it seems like there was quite some difficulty in—he was—I remember the agreement was in this option to reserve this kind of a swamp land up

(Testimony of Walter Stegmann.)

there and leave as many trees as possible, and then he would change his mind from time to time, but this was all supposed to be in one block, and it was a terrible thing to get squared.

Q. All right, you did have some difficulty in agreeing with you on the reserved property?

A. Yes.

Q. During those discussions did you suggest that you would forget about the 25-acre tract and just take the 40 in back? A. No.

Q. You had no such discussion. At that time didn't you make him an offer on just the 40 acres without the property [625] in the front?

A. No.

Q. Had you had any discussion with Paul Winans, either before the option was signed or afterward, about furnishing either an abstract or title insurance to the property?

A. What was that question again?

Q. Did you have any discussion with Mr. Winans before or after the option was signed regarding his furnishing either an abstract or title insurance?

A. Well, I never did have any discussion with him on him furnishing either one.

Q. Then, as you understood it, he was not supposed to furnish any abstract or title insurance?

A. Oh, I don't know as there was anything on the option of that.

Q. Of course, my question related to discussion, Mr. Stegmann. Did you have any discussions with Paul Winans about his furnishing an abstract or title insurance? A. No.

(Testimony of Walter Stegmann.)

Q. Was there any such discussion at any time in your presence?

A. There might have been, yes. I believe there was. It seems like it was on August 18th that—in the evening of August 18th. Let's see, I think it was about dusk Mr. Parker come up there, and they were having some [626] discussion on who was going to do what, but I didn't, had nothing to do with it.

Q. They were having a discussion about who was going to do what?

A. They were having a discussion on the, who was going to furnish—it seems like he was going to furnish an abstract because he already had a title policy or something like that.

Q. By "he" you mean Winans?

A. Winans, he said that they would probably furnish an abstract, but they already had a title policy, and he, I think, attempted, Mr. Winans did, to look for that title policy that same evening.

Q. You had him looking for the title policy earlier than that, too, didn't you, in your talks?

A. I didn't have him looking for it, but he did it on his own by looking for it to get the description of the property.

Q. Is this the second occasion that he was looking for the title policy?

A. Yes.

Q. The first time he was looking for it to get the description off of it?

A. Yes.

Q. And now he was looking for it in order to show it to [627] Mr. Parker?

(Testimony of Walter Stegmann.)

A. I believe that is what he was doing.

Q. Have you your testimony up there, Mr. Stegmann, or would you please take a look at—it is Exhibit 21, page 116.

(Exhibit presented to witness.)

Q. Mr. Stegmann, you have your testimony there that was taken on April 26, 1952; have you not?

A. Yes.

Q. Now, turn to—oh, yes, pardon me, this was taken later. This seems to be May 20, 1952. Turn to page 116 in that second deposition. Start at the top of the page.

The Court: How does it start?

Mr. Krause: Well, at the bottom of page 115 to get the connection.

“Q. When Mr. Parker got there—” this is on the 18th of August— “was he introduced to the other persons present?”

Your answer is: “I don’t remember, but I believe so.”

“Q. Was he introduced by his name ‘Chet L. Parker’? A. Yes, I am sure he was.

“Q. Was there any discussion about his interest in the property?

“A. As I remember, there was. I don’t remember whether I told him before or not, told Mr. Winans, but, as I [628] remember, I told him again that Mr. Parker had purchased my option on the thing and

(Testimony of Walter Stegmann.)

that from then on he and Mr. Parker were dealing. I was merely there, hired to run the lines and stake out this reserved portion."

Q. You recall so testifying, don't you?

A. Yes.

"Q. Was anything else said about Mr. Parker's interest in the property that night?

"A. I don't remember that there was.

"Q. Was there anything said about getting title insurance on that property that day or evening, in the presence of any of the Winans family?

"A. I don't remember.

"Q. Either the day or evening of August 18th?

"A. I don't remember.

"Q. When you say you don't remember, you mean something may have been said about getting title insurance on the property or it might not have? You can't tell one way or the other?

"A. If there was, I don't remember hearing it."

Q. Did you so testify? A. Yes. [629]

Q. Now, you seem to think that something was said about it, Mr. Stegmann?

A. Well, this was taken quite some time ago, and I do know it is what I could remember at that time, and there seemed like there might have been some discussion, and I seem to remember more clearly that it was.

Q. Who refreshed your memory on it, Mr. Stegmann?

A. I have read this deposition over and over, and I have been doing quite some thinking on it.

(Testimony of Walter Stegmann.)

Q. So although on May 20 last year you could not remember it, but now nearly a year later you do remember it?

A. Well, there is other discussions discussed where it brings this to me some times.

Q. Was August 18th the first date on which Mr. Parker became, Chet Parker became acquainted with Winans, so far as you know?

A. So far as I know, yes.

Q. That is, you had not seen Parker and Winans together prior to August 18th; is that right?

A. That is correct.

Q. What time of the day was it that they were together?

A. Well, I am sure it was in the evening.

Q. When had you exercised the option?

A. After I had been up on a survey with Paul Winans, and that morning on this surveying trip, as I remember, going [630] toward, we had to walk some distance from where we parked the car to go into the property, and I am sure I told him at that time that Mr. Parker had bought my option and that from there on him and Parker were dealing.

Q. All right, that is on the morning of the 18th of August before you exercised the option. You told him that Parker had bought the property, and Winans was dealing with him from then on; is that correct?

A. Yes.

Q. But now, my previous question was when did you exercise the option?

A. That some evening when I sold the option I—

(Testimony of Walter Stegmann.)

it was—Parker wanted me to—yes, I mean, I would pay the \$4,000 on to the balance of the option and on the—and sign—or this extension on the reserved area.

Q. When had you sold the option?

A. It was August 13th.

Q. Where were you at the time?

A. At The Dalles, Oregon.

Q. But it was on that night, on the 13th, that Mr. Parker asked you to pay the four thousand and get a written extension?

A. No, it was on that evening that he asked me to pay the \$4,000, and I would be hired, he would pay me so much to run the lines and set forth this reserved area in the [631] property.

Q. Nothing was said then about your arranging an extension for the surveying of the reserved acreage?

A. No, because I didn't know that we were not going to accomplish the surveying on the Saturday.

Q. At any rate, at what time of the day was it now when you signed the paper exercising the option?

A. I don't remember signing the Election. You mean, are you talking about the Election?

Q. The Election to Purchase, yes.

A. I remember signing the extension of time. It seems like there was a little argument there. I was paying the \$4,000, but I didn't know whether I was to sign the acknowledgement of Election to Purchase or not.

(Testimony of Walter Stegmann.)

Q. Why didn't you want to sign the Election to Purchase?

A. Because him and Parker, I had sold my option to Mr. Parker, and him and Parker were dealing from then on. I had told him that in the morning.

Q. In your deposition you testified positively that you had not signed the Election to Purchase; isn't that right?

A. I didn't think I had. I was sure that I hadn't, but——

Q. I am asking you whether in your deposition you did not in three different places testify that you were absolutely sure that you had not signed the Election to Purchase?

A. Yes, I said that. [632]

Q. That is what you did. Now then, what do you say now about whether you signed it or not?

A. Why, I don't think I signed it.

Q. You don't. Will you please hand him 307.

(Exhibit No. 307 handed to witness.)

The Court: Did he sign near the top?

Mr. Krause: Yes, the Notice of Election is on the top of the paper, and on the bottom of the paper there is an Acknowledgment of Notice.

Q. On this Election, up in the first paragraph there, is that your signature, Mr. Stegmann?

A. Well, I am not sure, but it looks like it here.

Q. You won't deny that it is your signature, will you?

(Testimony of Walter Stegmann.)

A. I didn't think I signed it. I was sure I hadn't.

Q. You had said that many times, Mr. Stegmann, but is that your signature?

A. I am not positive, but it looks like it.

Q. Is that your signature down below under the word "approved"?

A. Yes, I remember signing this.

Q. Do you see any difference in the two signatures?

A. Well, they resemble each other, only one does not have the "t" crossed in the last name.

Q. Do you usually cross your "t" when you are writing "Stegmann"? [633]

A. I always thought I did.

Q. You always crossed it, and the upper one is crossed, the "t" in the "Stegmann" on the, in the first place? A. It does not show here.

Q. It does not. Well now, Mr. Stegmann, did you read over this Notice of Election to Purchase before you put your signature on it?

A. I did read it. I am sure. There was so many, it seemed like there was so many copies to sign, and I may have signed it by mistake.

Q. By mistake? You carried away copies of this instrument; did you not?

A. I did take a copy, and I am not sure that I give that copy to—I believe I give a copy to Mr. Parker that evening when he was there, and I remember that copy did not have my signature up on the top line.

(Testimony of Walter Stegmann.)

Q. The copy that you carried away you had not signed?

A. I don't remember it. I don't remember having it signed.

Mr. Jaureguy: He didn't say that. Go ahead.

Mr. Krause: Let us find out.

Q. Did you sign the copy that you carried away?

A. Well, the copy that I had and I give to Mr. Parker that evening, I remember it only had one signature on the bottom of it.

Q. It had your signature on the bottom? [634]

A. Yes.

Q. It also had Paul and Ethel Winan's signatures, I suppose? A. Yes.

Q. Now, the acknowledgment, will you read the Acknowledgment of Notice there? Who is it addressed to? Is it addressed to Walter Stegmann?

The Court: Well, the instrument speaks for itself.

Q. (By Mr. Krause): Did you say that you read this instrument over, Mr. Stegmann, before you signed it?

A. I was particularly more interested in the—we were discussing the reserving this area, and that seemed to be the biggest part of our discussing, and Winans seemed to be more concerned about getting a reserved area set forth and an extension on the time, and that seemed to be more or less our discussion, and I don't remember—I read the other one and I do remember the, giving the extension of time more clearly than anything else.

(Testimony of Walter Stegmann.)

Q. Well, is it your testimony then that you remember reading it or that you do not remember reading it? A. Why, I remember reading it.

Q. You remember reading it. What had occurred during the day, Mr. Stegman, on August 18th? You and Paul Winans, you said, had been up on the property to try to survey the reserved area. Were you doing the surveying? [635]

A. Well, I was helping doing some of the surveying, but he had some surveyors from Portland there. I didn't remember their names at the time, but I think one is Mr. Haines now, as I remember it.

Q. Were there one or two of them?

A. There were two of them.

Q. In addition to yourself and Paul who else was there?

A. Well, my brother, Carl, was there.

Q. Was this the first time that you and Paul Winans had been on the property together?

A. No.

Q. You had been on it before? A. Yes.

Q. What was the previous occasion that you had been on the property?

A. I am sure it was about a week before this survey party.

Q. Well, that would have practically put it on the date on which you signed the option the week before?

A. I believe it was on that same day that we went up there, I don't know, Paul Winans and my-

(Testimony of Walter Stegmann.)

self went up there that morning, but I am not too positive.

Q. The day the option was signed?

A. Yes.

Q. Now, on this August 18th you were on the property that was involved in this purchase, and you assisted in the [636] survey. By the way—is that right, Mr. Stegmann?

A. Well, yes, I was helping them, assisted, but these surveyors had the instruments that I wasn't familiar with. I mean, the type of surveying I do so I merely did what I could to assist them, pulling the tape——

Q. While we are on this survey, Mr. Stegmann, just tell us what training and experience you had had in that line.

A. Well, the experience is——

Q. Let us have the training first, if you will.

A. I've had no special training in surveying.

Q. Have you had any training that is not special in surveying?

A. The only training, I haven't had any training. The only experience is doing, running lines, and cruising timber.

Q. Well, cruising has nothing to do with surveying, has it, Mr. Stegmann?

A. Quite often you have to survey out your lands to find the property before you can know which piece of timber you are going to cruise.

Q. Well then, whatever you know about surveying was gathered while in, out of practical exper-

(Testimony of Walter Stegmann.)

ience; is that right? A. Yes.

Q. What were these instruments that these surveyors had that you didn't understand how to [637] use?

A. Well, they had a transit, as I remember. Yes, it was a transit and no compass on it, and they merely had to go by positive directions and then figure—I don't understand it, I mean, it is——

Q. What other instruments are used in surveying besides a transit? A. Compasses.

Q. Anything else?

A. Well, I imagine there is several I don't know about.

Q. Do you use any chain or anything for making measurements?

A. Oh, yes, you use a chain. There is a staff compass that you use.

Q. I suppose these surveyors were equipped with chains in order to make measurements?

A. Yes.

Q. Did you have any such equipment?

A. On that day I did not, only my pocket compass.

Q. Well, did you have any equipment of that sort any time while you were up on the property?

A. Up later, yes, I had some equipment.

Q. What kind of equipment did you have?

A. Well, I had, I think when we finished setting out, yes, when we set out the reserved area I had a chain and a staff compass.

Q. Is that the same compass that you had on

(Testimony of Walter Stegmann.)

this former [638] occasion? A. Yes.

Q. Where had you gotten the chain?

A. Well, I don't remember just where I did buy it.

Q. You bought it specially for this surveying job up there?

A. Oh, no, I have had it for several years.

Q. Oh, you brought it up there with you?

A. I quite often carry it in the car, yes.

Q. All right, now, these two men with whom you were engaged in surveying the reserved area, was there any discussion among you men there regarding the—particularly the title to the 40 acres?

A. No.

Q. No discussion particularly regarding the necessity probably of an act of Congress in order to get a title to it? A. No.

Q. Was there any discussion there about this Section 16 being school land?

A. I don't remember that either.

Q. There were no discussions that you recall?

A. No.

Q. Relating to the ownership of the 40 acres: is that right? A. What was that?

Q. There was no discussion on that day while up on the [639] property regarding the ownership of the 40 acres? A. No.

Q. When did you go up to the property on the next occasion to continue with surveying this reserved area?

(Testimony of Walter Stegmann.)

A. There were several occasions. I don't know of a one distinctly, but it was within a few days.

Q. Within a few days, and who went up on that occasion?

A. There may have been another surveyor at that time come up there. I don't recall.

Q. A different surveyor than those we have discussed here?

A. That one time there may have been the same men there, I am not sure, and then there was another man, I believe. They were trying to take some more surveying.

Q. Now, you say that Parker was up there at Mr. Winans' place on the 18th. That is the date on which you elected to purchase. Now, when was the next time that Mr. Parker, that you saw Mr. Parker and Mr. Winans together?

A. Well, the exact date would be pretty hard to say, but it probably was the latter part of August, that the reserved area had to be set out before the deed could be completed, that is, the description could be entered into the deed; and that Parker went to Mr. Winans' place, and I went with him, and we stopped at—yes, it was his place at a little office there, to see if he was ready to go up and finish staking off the property. [640]

Q. Well, it was with these same surveyors, Mr. Haines and Mr. Kenny, you were up there toward the latter part of August still trying to survey the reserved area?

(Testimony of Walter Stegmann.)

A. Oh, it was after the 18th of August, I know.

Q. It was after the 18th of August. Will you please hand Mr. Stegmann Exhibit No. 308.

(Exhibit No. 308 referred to tendered to the witness.)

Q. Is that your signature on that Exhibit 308?

A. Yes, it looks like it.

Q. What other signatures are there on there?

A. Oh, I don't see any—oh, yes, there is Paul Winans' signature there.

Q. Your signature and Paul Winans, and what is the date? A. It is August 26th.

Q. Is that the date on which you signed that?

A. Well, I don't—I can't recall the exact day. No, it is possible. If it says here it is that date, it probably was that date.

Q. Do you know where it was signed?

A. It may have been signed at his office or it may have been signed out in the field there, but I don't know.

Q. Was that one of the dates on which Haines and this other surveyor were there trying to have surveyed this reserved area? [641]

A. Well, on that exact date I can't say exactly.

Q. At any rate, on the 26th of August you were again agreeing with Winans for an extension of time to set out the reserved area?

A. Yes, that I was supposed to set out this reserved area, and it had not been accomplished, I felt I could agree to an extension of time.

Q. Well, you did, anyway? A. Yes.

(Testimony of Walter Stegmann.)

Q. Will you show that to counsel. I think everybody has seen it.

Mr. Ryan: I would like to see it.

Q. (By Mr. Krause): This paper that you signed there says that the deal has finally got to be completed on September 10; does it not?

A. Well, that is what it says on there. I just recently read it now.

Q. Well, why did you make that demand that it had to be closed by September 10th?

A. I don't know whether that was agreed by him or—it seems like it was his proposal.

Q. Both of you agreed to it because you signed it, but you think that Paul Winans said, "This has got to be closed by the 10th of September"?

A. It is possible. [642]

Q. You did not demand that it be finished by the 10th of September, did you?

A. As I remember that, the partners had kind of insisted that this reserved area was set aside and that there may have been some discussion on it.

Q. Parker did not demand that the reserved area be set aside, did he? That was in the option.

A. Well, it had to be staked out.

Q. Yes, it had to be surveyed. Well, what is your recollection now as to who fixed that date of September 10th, you or Winans?

A. I don't know.

Q. You don't know. Of course, Parker was not there, was he?

(Testimony of Walter Stegmann.)

A. I don't know on this date exactly. I don't think he was on this date, no.

Q. Now, a day or two after that survey on the 26th, that Saturday, the 26th was Saturday. The 18th, you know, was a Saturday. A week from that would have been the 25th, and the 26th was Sunday.

Either the next day or the day after that do you recall coming up to Dee with Parker?

A. Which day was this now?

Q. A day or two after the 26th.

A. Oh, it was sometime in the latter part of August. I think it was after the 18th that Winans and I worked—this [643] was the day that had not been set forth, and that Parker went up with me to see if they could get the reserved area set aside.

Q. Well, let me see if I can refresh your memory as to something that occurred on the 26th.

The reserved area had not been set aside. That is, you had not, by the 26th you had not completed surveying the reserved area, had you?

A. I gather from this, yes.

Q. All right, so on that day you said you had a friend who was a surveyor; do you recall that?

A. I don't recall that.

Q. Well, did you tell them that you have a friend, a surveyor that was a friend of yours that you could bring up there? A. No.

Q. You didn't, and then on the following day or the day after that you brought Mr. Parker up there?

A. Well, that is one time Parker went up with me and Mr. Parker and his son and myself went up

(Testimony of Walter Stegmann.)

to Paul Winans' place in the latter part of August to—I was trying to get this reserved area set out, and it seems like there was an agreement between Mr. Winans and Parker that it was supposed to be done by the 10th of September, and there we spent all this time mostly trying to survey out this reserved area [644] with Winans, and he still hadn't accomplished it.

Q. Well, I will ask you whether you did not on the 27th or 28th of August come up there to the place where Mr. Winans lived and introduce Chet Parker as this surveyor friend of yours?

A. No.

Q. At any rate, you did bring him up there and introduce him to Mr. Winans?

A. Why did I? Mr. Parker had already been introduced to Mr. Winans.

Q. On the 18th? A. Yes.

Q. He had not been up there any time after that though that you know of, had he?

A. Well, not that I know of.

Q. All right, but, at any rate—did you stop there at Mr. Winans' place and talk to him the day you went up to Lost Lake?

A. Oh, yes, he was supposed to go along, and, after all, it was his privilege to agree where the reserved area was to be.

Q. So you stopped and talked to him?

A. Yes.

Q. You asked Mr. Winans to come along?

A. Well, I assumed he was going to go along.

(Testimony of Walter Stegmann.)

Q. At any rate, on that day you and Mr. Parker and his son [645] went up there by yourselves?

A. I think it might have been because, it seemed like Winans was pretty busy doing this and that, and had a housing project there he was taking care of, and they didn't have the time to go that date.

Q. A couple of days after that you and Parker and his son and Paul Winans and Ross Winans went up there again to do some surveying; is that right? A. Yes.

Q. And this time Parker and his son went along, too; do you recall that? A. Yes.

Q. Did Parker and his son assist you in surveying at that time?

A. They assisted me in surveying, setting forth this reserved area.

Q. This time you had no trained surveyor along unless Mr. Parker was?

A. Well, I don't know as Mr. Parker knew too much about it.

Q. All right, we will assume he knew nothing about it, but at any rate, there was no trained surveyor with you on that occasion? A. No.

Q. So you were doing the surveying, I suppose?

A. I had ran lines and did surveying, yes. [646]

Q. Was there any discussion while you were up on the Lost Lake property on that day as to the, as to what steps would be necessary to get a title to the 40 acres? A. I know of no discussion.

Q. Were there any discussions regarding income taxes?

(Testimony of Walter Stegmann.)

A. There seemed to be quite some discussion between Mr. Parker and Winans. They would—at different times when I would be surveying and laying out the piece of property, why then, it was not right, and then I would go back and do it over again, and it seemed like the amount of acreage—they were sitting down there on the bridge or having quite a—I don't know, it seemed like it would have been a heated argument there about—their figures didn't agree on the acreage.

Q. By "their figures," you mean Parker's?

A. Parker's and Winans'.

Q. Parker's and Winans' figures?

A. And I didn't have too—hear their conversation because I would pass by them sometimes, and sometimes I would be quite near for a few minutes, and then I would be quite some distance from them.

Q. Well, there were discussions regarding the reserved area, but my present one, did you hear anything regarding income taxes?

A. There might have—yes, I believe there was some. I am [647] sure that at noon when we were eating lunch by the park there may have been some discussion about income tax.

Q. Was there anything said about a claim having been made by Ethel Winans against the Pacific Abstract Title Company because of the condition of the title on the 40 acres?

A. None that I know of.

Q. You didn't hear any about it?

A. No.

(Testimony of Walter Stegmann.)

Q. When did you finally get this survey completed in this reserved area?

A. Regarding what?

Q. The reserved area.

A. You mean at the grounds itself?

Q. Well, when did you—to make a survey I suppose you stake it up and get the measurements, get the metes and bounds? A. Yes.

Q. All right, when did you complete that?

A. I can't remember the exact, the exact day. I mean, it was some time after this, within a few days when this was all taking place, this surveying, the latter part of August.

Q. Well, you didn't finally meet in Vawter Parker's office up there, the lawyer's office, to close this deal or get the deed drawn up, until the 8th of September. Now, had you completed the surveying before the end of August? [648]

A. Well, it was either right at the end of August or possibly the first part of September, but I am sure it was in August.

Q. That you completed it?

A. I am sure it was.

Q. Well, why was there any delay then from the end of August until the 8th of September to execute the deed and close the deal?

A. Well, I was keeping contact with Mr. Winans to find out when I was to see that the lands on this reserved area were described properly in the deed, and it seemed like there always was a delay on his part.

(Testimony of Walter Stegmann.)

Q. At any rate, on Saturday, September 8th, you and Haines and Winans met in Vawter Parker's office in Hood River? A. Yes.

Q. Did Mr. Haines have the description of the reserved area?

A. I can't recall whether—I am sure he had the description of it, and I had some descriptions of it.

Q. The two of you together agreed upon a description? A. Yes.

Q. Did this description of the reserved area, did that involve more than 8.88 acres.

A. At first it was supposed to be about 8.88 acres, and during this survey up there when Mr. Parker and Mr. Winans were up there, there was some discussion about him taking [649] some more area if he wanted it, and they, Mr. Parker and Mr. Winans, I guess, agreed on a price of how much it was going to be or how much he was supposed to take because I was told if he wanted to include this additional acreage, why, go ahead and include it in the reserved area.

Q. Now, my question was, did the reserve area involve more than 8.88 acres as you finally staked it out? A. Yes.

Q. All right, how much more?

A. I believe it was an acre and a half or something like that.

Q. About an acre and a half?

A. I believe it was.

Q. While you were in Mr. Parker's office did

(Testimony of Walter Stegmann.)

you and Mr. Winans and Mr. Parker and Mr. Haines figure out how much was to be paid for that, how much of an allowance was to be made for that acre and a half?

A. Who did you say was there again?

Q. Why, you were there, Vawter Parker was there, Haines was there, Winans was there.

A. Oh, I thought—as I knew that this price had been decided on out on the property between Mr. Parker and Mr. Winans——

Q. All right, then, it is your testimony that there was no discussion there in trying to determine how much the Winans were going to have to allow on the purchase price for this [650] additional acre and a half? A. I don't remember that.

Q. You don't remember. This acre and a half, was that being reserved from the 25-acre tract or the 40-acre tract?

A. Oh, I would have to look at a map to be—I mean, on this reserved area to be exactly sure whether it crossed the line or didn't cross the line.

Q. You don't remember whether it crossed the line into the 40 acres or not? A. No.

Q. Isn't it a fact, Mr. Stegmann, that you there assisted in computing the value of this acre and a half by dividing 25.88 acres in 80,000?

A. Oh, I don't know as I did.

Q. And you arrived at a figure something over \$3,000 and agreed on \$4,750 as the proper charge for one and a half acres?

A. Well, this price had always been agreed, as

(Testimony of Walter Stegmann.)

I knew, between Mr. Parker and Mr. Winans out there when we was staking out this reserved area because we tentatively measured it out.

Q. Did you hear them mention this price of \$4,750?

A. It may have been mentioned. I don't know, I never did hear it. [651]

Q. How did you know how much of a check you had to get back in closing this deal?

A. Well, I didn't get any check back.

Q. You didn't actually handle the money, that is, that was done by Mr. Abraham; was it not?

A. I don't quite understand what——

Q. Did you finally pay the money on the delivery of the deed, or did somebody else do it?

A. Well, I had nothing to do with that.

Q. You did not pay it? A. No.

Q. And you did not get this refund of \$4,750?

A. No.

Q. Were there any discussions in Mr. Parker's office regarding the ownership of the 40 acres?

A. No, not that I heard.

Q. Will you look at this Exhibit No. 311, please? Have you seen that paper before, Mr. Stegmann?

A. Yes.

Q. Where did you see it before?

A. Mr. Ryan, my attorney, showed it to me.

Q. That is the only time you have seen it heretofore? A. Yes.

Q. You did not see that paper in Vawter Parker's office? A. No. [652]

(Testimony of Walter Stegmann.)

Mr. Ryan: Are you asking that this be admitted?

Mr. Krause: No, I am trying to identify it first.

Q. (By Mr. Krause): You did not see that paper in Vawter Parker's office? A. No.

Q. You did not have it in your hands in Vawter Parker's office? A. Well, I am sure I never.

The Court: What exhibit is it?

Mr. Krause: It is 311. We will have to identify it. Mr. Stegmann, isn't it a fact that this paper, Exhibit No. 311, was handed to you in Vawter Parker's office, and you read it over and that you then refused to sign it?

A. Oh, I am sure I never.

Q. All right then, let me ask you whether you read over a paper that in substance said that you agreed that you were taking the title to the 40 acres subject to the rights of the government?

A. No.

Q. There was no such paper handed to you?

A. I am sure there wasn't ever.

Q. Is it a fact, Mr. Stegmann, that you argued with Mr. Winans and Mr. Parker about signing this Exhibit No. 311 and told them it was not needed because you were only getting a quitclaim [653] deed?

A. I am sure I never told them anything like that.

Q. You didn't tell.

A. That was Mr. Vawter Parker.

Q. Vawter Parker? A. Yes.

Q. Didn't you also at that time say that if you

(Testimony of Walter Stegmann.)

signed this paper it was just as much as admitting that you were not getting nothing with respect to that 40 acres?

A. You mean, what was that question again?

Q. Didn't you tell Mr. Parker and Mr. Haines, that is, Mr. Haines was there and Mr. Winans, that if you signed this paper that was handed to you and this—particularly this Exhibit 311, that it would be the same as your admitting that you were not getting nothing with respect to the 40 acres?

A. I am sure I never told them anything about it.

Q. There was no discussion there in Mr. Parker's office regarding the title to the 40 acres?

A. I am sure I never heard any.

Q. There was no discussion there with respect to the rights of the United States to the 40 acres?

A. No.

Q. This is still on this same day, September 8th, Mr. Stegmann, September 8th, while you were in Vawter Parker's office. There was no discussion there at that time with [654] respect to the claim having been made on the Pacific Abstract and Title Company by Ethel Winans? A. No.

Q. All of these matters regarding the claim of the Government to this property, when did they first come to your notice?

A. I can't recall the exact day, but it seems like it might have been, it was quite some time after this, Winans and I had finished setting off the reserved area in this deed.

(Testimony of Walter Stegmann.)

Q. Quite some time after setting forth the reserved area? A. Yes.

Q. Well, was it before this visit to Parker's office?

A. Oh, it was quite some time after September—let me see, when was that, the 10th, it was after that.

Q. After September 10th? A. Yes.

Q. That was after the deed had been delivered and the money paid? A. Yes.

Q. Then you learned for the first time that the United States had some claim on the 40 acres?

A. It must have been in October or November, I thought.

Q. Did you attend any meetings in the offices of the Marsh brothers in McMinnville when Mr. Parker and the [655] representative of the Title and Trust Company were present?

A. I never attended any meetings there.

Q. You never attended any? You are sure it was not earlier than October, at any rate, that you heard about the claim to this property, the claim of the United States?

A. Well, I am not positive of the date now, but it wasn't—it was along about there.

Q. When you gave the \$25,000 check back to Parker it was not because of the fact that you then knew of this claim of the United States?

A. No, when I give back the check in payment for the mortgages I didn't, wasn't—

Q. The fact that this claim of the United States

(Testimony of Walter Stegmann.)

had developed against this 40 acres had nothing to do with your turning the \$25,000 check back to Parker? A. Oh, no.

Q. And there were no discussions about that at that time? A. I don't remember any.

Q. Now, let us see what you did after. On the 8th of September was this day that you were in Vawter Parker's office with Winans, Haines, the surveyor, and Mr. Parker; you recall that, don't you? A. September 8th?

Q. Yes. A. Yes. [656]

Q. Now then, tell us what you did there with respect to getting the deed out and so on.

A. Well, I didn't have anything with getting the deed out. It was only that we had hours of discussion on this reserved area. It seems like, as I already knew I would have to be done, why, everybody else had different ideas how it should be worked in the deed, and we had hours of rewriting and figuring.

Q. The description? A. Yes.

Q. Then Mr. Vawter Parker proposed that you go over, all of you go over to the Title and Trust Company's office because maybe their maps would help you to get this reserved area set out; do you recall that?

A. I don't know as he had proposed that. As I remember, he was going to call up somebody and ask them about it. It seems like it was an insurance company or something, and I says, "Well, I don't care if you call him, but I can't see no point in

(Testimony of Walter Stegmann.)

calling this man. If you want to call somebody, call the County Surveyor and Engineer," because we would need an engineer there trying to set this out.

Q. You furthermore told him not to call on the Title Insurance Company because you would take the description as it was; you were satisfied with it?

A. No, we were not quite satisfied. We had reached an [657] agreement, I think, but I could see no reason of calling. The only person I could see would be a County Engineer or someone who really knew engineering to come in and straighten it out, but he could go ahead and call anyone he wanted to, but I just thought that that was the man he should have got if he was going to get someone.

Q. You told him if he wanted to he could go ahead and consult with the Title and Trust Company to see what they would do about the reserved area?

A. I told him they could consult with anyone, and if he wanted to, to get the County Engineer and someone that knew how to set this out.

Q. This all occurred on that Saturday, didn't it?

A. I am not positive that it occurred on that Saturday and part of Monday. There was two days there that it took, two days to set out this description of the property.

Q. On this Saturday you carried away a copy of this deed, didn't you?

A. I don't think I did.

Q. When did you get a copy of the deed?

(Testimony of Walter Stegmann.)

A. It was on the Monday, and I think the Monday was, as I remember here from a notation, that it was the 10th of September.

Q. On the 10th of September. That is when you think you finally got a copy of the deed? [658]

A. Yes.

Q. What did you do with it?

A. I took it over to Vawter Parker's office.

Q. To Vawter Parker—

A. Oh, excuse me, I am sorry. I took it over to Kenneth Abraham's office.

Q. Had you been to Kenneth Abraham's office before that?

A. No, but I had passed by on the street there. I do, could see where to go to it.

Q. You don't think you did that on Saturday?

A. Well, I am sure it was not on Saturday.

Q. When did you finally sever your connection with the matter? Now, you carried this deed over to Kenneth Abraham's office. You think that was on Monday, the 10th of September? A. Yes.

Q. All right, what did you do then?

A. I walked to Mr. Abraham's office, and as I went in the door Mrs. Parker was there. They have a waiting room, and the office door to his private office is right there together, practically, and I handed it to Mrs. Parker, and I don't know whether Mr. Abraham came out or Mrs. Parker was standing in the door then when she had the paper—of Abraham's office—but I said, to my knowledge, the

(Testimony of Walter Stegmann.)

description is correct as, as it was set out, and on the reserved area, as far as I was concerned I was finished with it. [659]

Q. You told Mrs. Parker that? A. Yes.

Q. What did you do then?

A. I am sure I left them.

Q. Where did you go?

A. I must have went back to The Dalles. I was living there.

Q. Did you come back to Hood River on the following day, Tuesday? A. No.

Q. So your last contact or connection with this deal was on Monday, September 10th, about what hour of the day?

A. Well, it was getting pretty close to, it seems like quitting time because everyone was getting kind of anxious to go home. It must have been 4:30 or 5:00 o'clock, maybe even later, I don't know. It was getting to the point where everyone was getting anxious to go home. It was closing time.

Mr. Krause: Might I, before it slips my mind, offer in evidence Exhibit 308. That is the Election to Purchase.

Mr. Lindsay: It is already in.

Mr. Krause: Well, it is 308, is the agreement to extend the time to set out the reserved area, to set out on August 26th. That is 308.

(Document, Agreement to Extend Time, was marked Defendant's Exhibit 308 for identification.) [660]

(Testimony of Walter Stegmann.)

The Court: It may be admitted.

(Thereupon, the document previously marked Exhibit 308 for identification was received in evidence.)

The Court: Recess until 1:15.

(Noon recess taken.) [661]

January 23, 1953, 1:15 P.M.

WALTER STEGMANN

recalled, testified as follows:

Cross-Examination
(Continued)

By Mr. Krause:

Q. Mr. Stegmann, returning to this meeting in Vawter Parker's office on Saturday, what discussion, if any, had there been regarding the name of the grantee in the deed?

A. Well, it seems like he was wondering whose name was to be put in, Mr. Parker's name or his son. I told him I didn't know whose name was to be put in, whether it was Mr. Parker or his boy or his wife's name would be put in there.

Q. When you say he was wondering, who was wondering, Mr. Stegmann?

A. It seems like Mr. Winans was wondering, but I am not sure. You asked me——

Q. Of course, my question was was there any discussion there regarding the name of the grantee.

(Testimony of Walter Stegmann.)

Now, if somebody is wondering about it, that is not a discussion unless they say something. What discussion was there about the name of the grantee?

A. You mean what was said about it?

Q. That is right, talk. [662]

A. I don't know, but Mr. Parker, Vawter Parker, and Mr. Winans asked if there should be, whose name should be put in the deed, and I said well, I didn't know, Parker himself, his wife or his boy's name or in their business name.

Q. What was their business name?

A. I remember it was Associated Engineers.

Q. How about the Phillips Construction Company?

A. I don't have any recollection of that.

Q. Either Winans or Vawter Parker asked you, I suppose, because you were the only person there that might know, if you did, whether they should put in the name of Chet Parker or his wife's name or his son's name; is that right, or his business name?

A. I imagine there was some discussion.

Q. Well, did you hear it? A. Yes.

Q. Now, didn't you also hear Mr. Parker ask you what name to put in there, whether you wanted your name there?

A. Well, I could see no reason for wanting my name there.

Q. Did he ask you whether he should put your name in? A. No.

Q. Did you tell him that you didn't know

(Testimony of Walter Stegmann.)

whether you would have your name, your wife's name, or your child's name in it, your son's name?

A. I didn't tell him that.

Q. You did not. At any rate, the deed that you carried away [663] from there left the grantee in blank; did it not?

A. I am not sure whether it did or didn't.

Q. You don't know what the deed had on it?

A. Not on—only the description of the property I was sure was right.

Q. Of course, you had been working over this very paper; had you not, that is, you had read it through in order to see what the description was?

A. Well, what portion I read, and particularly was interested in seeing correct, was in a separate paragraph, it seems to see, and I never paid any attention to the rest of it.

Q. The reserved area? A. Yes.

Q. So you don't know whether the grantee's name was filled in when you carried it away or not?

A. I couldn't say.

The Court: Are you referring to the copy?

Mr. Krause: The copy, yes, that is the only one that he——

Q. After the deed was signed did you have hold of the signed deed at all, the one that was signed by Ethel Winans?

A. I don't think I did because—no, I never remember her signature.

Q. All right, now, what discussion took place there between [664] you and Vawter Parker and

(Testimony of Walter Stegmann.)

Winans regarding the manner of payment of the balance due under the option?

A. I don't know whether there was any discussion between myself and them.

Q. That was while still the four of you were there. Mr. Haines was there, too. You don't recall any discussion?

A. I don't recall any of that.

Q. Were you not asked there how you were going to pay for this, pay the balance?

A. No.

Q. You told them that you were going to give them a check drawn by yourself?

A. I don't know as I ever told them anything like that.

Q. Didn't you, and didn't Mr. Parker say that in view of the large amount involved that he could not accept your uncertified check?

A. Well, I remember no such conversation.

Q. You did not, and isn't it a fact that you then agreed that payment should be made by cashier's check?

A. I am sure I never heard any such conversation.

Q. Did you have any conversation with Chet Parker or Lois Parker advising them in what form the money would have to be when the final payment was made.

A. No, I didn't have—I just—they must have knew.

Q. They must have knew? [665]

(Testimony of Walter Stegmann.)

A. The arrangment between Parker and Mr. Winans.

Q. You didn't tell them on—either Mr. Chet Parker or Lois—on that Saturday that Mr. Parker, Vawter Parker, was insisting on a certified check or a cashier's check?

A. I don't even remember seeing—it is possible that I did see her, but I don't ever remember saying anything like that.

Q. Well, you would not have to see either one of them to tell them that. You could have telephoned, couldn't you, but you didn't tell——

The Court: I think he has answered that, he didn't have any conversation. Let us get on.

Q. (By Mr. Krause): You had some discussion with Mr. Winans regarding helping him finance the building of some houses at Dee?

A. Yes, he discussed that.

Q. Did you make any agreement or promise to him that you would finance the building of any of the houses?

A. I don't know as I ever promised him that I would.

Q. Did you discuss it with him in a manner which indicated that you were interested in helping him finance it?

A. Yes, I was interested to look at what he had. It was possible that it was a profitable housing project.

Q. You had the money with which you could have

(Testimony of Walter Stegmann.)

financed some of his building there at that time. didn't you? [666]

A. Well, I had a small amount.

Q. So this thing that is called a house project just consisted of some land that Mr. Winans owned at Dee; did it not? This housing project that he showed you was just a piece of land, wasn't it, with one house built on it?

A. Yes, he had some land there with one house on it he was building.

Q. It was under construction at that time?

A. I don't think it was quite finished.

Q. Mr. Winans wanted to build some more houses on there?

A. Yes, he, that is what he indicated.

Q. Those were houses for workers in the saw-mills close by there; is that what he intended them for?

A. Well, I think that is what he intended them for, anyone who would purchase them.

Q. Did you arrange to have a gentleman by the name of Wardell, come to Hood River in order to look into whether he wanted to help Paul Winans finance that project?

A. Well, I don't remember whether I did or not.

Q. You don't know whether you did or not?

A. Yes.

Q. You knew Wardell at that time, I suppose?

A. Oh, yes, I knew of him.

Q. Was Wardell a man with some considerable

(Testimony of Walter Stegmann.)

means, of considerable means, as far as you [667] knew?

A. Well, as far as I knew, he appeared that way.

Q. However, you don't know whether you brought him up there in order for him to talk to Paul?

A. Well, I never did take him up there.

Q. No not take him up but arrange to have him come up?

A. Well, I don't remember that I ever.

Q. You don't know whether you did?

A. No.

Mr. Krause: You may cross-examine. I am through.

The Court: Mr. Jaureguy is next.

Cross-Examination

By Mr. Jaureguy:

Q. I only have one or two questions here. I think that Mr. Krause asked you about your buying equipment for the Gopher Valley project. Did you buy it for that project, or did you already have it before you got that project?

A. Oh, I had a considerable amount of equipment before I went to Gopher Valley.

Q. Then the next question was whether Parker paid you for showing Weedman some corners on Parker's property, and you said "no." Did Weedman pay you for that?

A. Yes, Weedman Lumber Company paid me for my services there.

(Testimony of Walter Stegmann.)

Mr. Jaureguy: That is all.

The Court: All right, Mr. Ryan. [668]

Cross-Examination

By Mr. Ryan:

Q. Mr. Strayer asked you about a man by the name of Ellis, I believe, who owned a gas station, and whether there was an account owing from you to Mr. Ellis, and involved in that matter there was some truck. Could you explain what happened to that truck?

A. Yes, I am sure I can. I did owe him some money for some gas and probably some parts, and I had been paying him, but he took one of these trucks and held it in his possession for this bill, and the truck was more value than—I had a small mortgage on the truck to Mr. Heider and the mortgage on the price of the truck would be more than enough to pay off this debt.

Q. What happened to the truck; what finally happened to it?

A. Well, as I remember clearly, that I told Mr. Heider where the truck was and what had happened to it.

Q. Then what happened?

A. Well, I don't know.

Q. What happened to the truck?

A. Well, it was still there, as I remember.

Q. Did Mr. Heider—was Mr. Heider ever paid off, or was the truck transferred from your name, or what was the end of that?

(Testimony of Walter Stegmann.)

A. I think the truck was transferred from my name to Mr. [669] Heider. I can't remember that transaction.

Q. That was in satisfaction of the gas bill as well as of your ownership of the truck?

A. Yes.

Q. The mortgage on the truck.

A. Well, when I—I thought it was more than enough to pay off his gas bill.

Q. In other words, you abandoned the truck to Mr. Ellis? A. Yes.

Q. That is what you remember.

This dispute with the Arthurs regarding some logs, how was that finally resolved, Mr. Stegmann?

A. You mean——

Q. How did, how was that finally settled?

A. Well, it seems like, yes, Attorney Frank Marsh and I went down to Mr. Arthur's office.

Q. Who was he representing?

A. Frank Marsh was with me, and Otto Heider was representing Arthur—and what was that other name?

Q. Well, I have Arthur here.

A. The Arthurs and we made a settlement on that as agreed on, and I give him a note, Mr. Heider, to pay off these people.

Q. How much was that note for?

A. I think it was, it was around \$360, \$350. [670]

Q. Do you still owe Mr. Heider for that?

A. I still owe Mr. Heider some on that note.

Q. Do you owe him anything else?

(Testimony of Walter Stegmann.)

A. No.

Q. Over a period of time did you borrow money from Mr. Heider for the purpose of purchasing equipment?

A. I borrowed quite a sum of money over quite a period of time from him.

Q. For the purpose of purchasing equipment?

A. Yes.

Q. Now, there was some question raised here about an Arch. I believe that the information came to Mr. Strayer from the bank records of the Parkers.

Do you remember that transaction?

A. What I remember, it has been quite some time ago, but I did sell an Arch to some people, a man, O. P. Peavey, and I think Mr. Parker financed him or paid me off for the Arch.

Q. Paid you off in behalf of the other man?

A. Yes.

Q. There was some question about a \$200 loan that you were asked to recall. Were you loaned any money out of this transaction?

A. I don't remember, it must have been the other fellows.

Q. Were you or were you not loaned \$200?

A. No, I don't remember. [671]

The Court: What was the answer?

The Witness: No.

Mr. Ryan: He does not remember.

Q. (By Mr. Ryan): At the time you got the cash loan of \$22,000 on November 20, 1950, you gave

(Testimony of Walter Stegmann.)

as collateral a Willamette yarder with a 200 horsepower, is that Cummins diesel engine?

A. Yes.

Q. And also some lines, rigging, parts, and other equipment to be used in yarding logs, and also an Austin-Western road grader. Did you own that property at that time? A. Yes.

Q. You owned it, and did you have some idea of its value at that time in 1950?

A. Well, it was worth well over twenty to \$25,000.

Q. There was a question asked you about where that equipment is today. Would you tell us what happened to the yarder?

A. Well, the yarder, that particular one, I believe a tree—there was a storm there in the fall of 1951, I think, and damaged it, and I had sold off some of the salvage, and the road grader is at my brother's place yet. He has kept it and has been using it, but I still own it.

Q. It is yours? A. Yes.

Q. You still own the grader? [672]

A. Yes.

Q. It is being kept by your brother. Now, the yarder was damaged by a falling tree?

A. Yes, I think there was, yes, a tree that was, damaged the motor and some other things.

Q. Did you dispose of the salvage on the yarder before or after you made payment on that \$22,000 loan to Mr. Parker in September of 1951?

(Testimony of Walter Stegmann.)

A. Well, it would be after that I made the payment to Parker on the loan.

Q. Now, it was discussed here that you still owe a balance of approximately twelve hundred dollars to Mr. Parker on this loan, and you still have possession of that grader. Could you tell us the value of that grader at this time?

A. Well, the value of that grader is in the neighborhood of fifteen hundred dollars, two thousand dollars, which is value enough more than to satisfy it, if I do owe him any balance on the loan.

Q. These two Carco Towing Winches, that is logging equipment, too, I assume? A. Yes.

Q. Those were some of the collateral given on the ten thousand dollar extension, note extension in May 1, 1951. Could you give us the value of those?

A. Well, I would say they were—— [673]

Q. At that time.

A. At that time to replace them would take you well over \$10,000 to have replaced that equipment.

Q. Did you own this in your own name?

A. Yes.

The Court: What was that, an Arch?

Mr. Ryan: No, it is the Carco Towing Winches, two of them.

The Court: Two Carco Towing Winches. Well over \$10,000, did you say?

The Witness: Well, there was one that—as I recollect, there was, instead of a towing winch it was a mistake on it, and it was a double drum rig

(Testimony of Walter Stegmann.)

which was on the back of a cat, which is worth more than your towing winch.

The Court: How old was it, how old was that winch?

The Witness: Well, as I remember, it come with some surplus equipment I purchased right after the war.

The Court: Did you pay a thousand dollars for it?

The Witness: Oh, it was more than a thousand dollars.

The Court: What size of a cat does it fit on?

The Witness: Well, this was a D-7 cat that I bought from the surplus.

Q. (By Mr. Ryan): There was a question asked here with respect to showing Mr. Wardell some timber land in the Pea Vine, belonging to Mr. Parker. Could you tell us of any possible [674] transaction to which that could be referring?

A. I didn't quite understand you that time.

Q. This question asked about showing Mr. Wardell some Pea Vine property that is down in Yamhill County that belonged to the Parkers, could you tell the Court of any transactions which you think you had with Mr. Wardell regarding property during this period?

A. I never did take Mr. Wardell to show him any property that Mr. Parker owned or had. I did take him up to Pea Vine and show him some property that I owned up there and some other property

(Testimony of Walter Stegmann.)

that I did—timber lands I was looking at over at Carlton.

Q. There was a mention of Mr. Hutchins' property.
A. This was up close to——

Q. How did you happen to show him Mr. Hutchins' property, or did you show it to him?

A. I didn't show him Mr. Hutchins' property. It belonged to a real estate man, and I had to purchase that option on it, or, I mean I had paid him a small fee for the timber, and I was planning on buying it, but I didn't buy it, and Mr. Hutchins was a farmer, and he had some money to loan, and he possibly would have bought it, I mean, would have financed, would have possibly bought——

Q. Possibly would have bought the property from you if you [675] had taken up the option?

A. Yes.

Mr. Ryan: That is the extent of my cross-examination.

Redirect Examination

By Mr. Strayer:

Q. Was that the Kennedy property that you showed to Mr. Wardell?

A. I believe it was; that was it.

Q. You paid \$50 for an option on that?

A. Yes.

Q. Did you show Mr. Parker the Johnson property that you bought in May of 1951?

A. No, I didn't, I didn't show it to him. I think I might have mentioned it to him, but he had looked

(Testimony of Walter Stegmann.)

at it for some time before, I think. I am not sure.

Q. He had looked at it with Mr. Walker, a cruiser; had he not, before you bought it?

A. I don't know.

Q. Did you testify the other day to whom you had sold the yarder? I have forgotten.

A. Which yarder was that?

Q. The yarder that you say was mortgaged to Mr. Parker?

A. Well, I had sold parts of it to several different people. [676]

Q. That was the one that was damaged by the tree; was it not? A. Yes.

Q. Do you remember the names of the people that bought it?

A. I couldn't remember the names offhand. There was some—some of it was sold to some junkman, and some rigging was sold to quite a different loggers. I couldn't——

Q. Who did you sell the diesel engine to?

A. I don't remember whether it was a junkman that took that or what it was.

Q. From whom did you buy this grader, the Austin-Western grader?

A. Well, I can't recollect exactly who I bought it from. There was quite a bit of equipment that I had bought, and I just can't remember exact. It might have come from one of the loggers as I was logging, loading out logs for Willamina Lumber.

Q. How old is it now?

A. I couldn't say the exact age.

(Testimony of Walter Stegmann.)

Q. You don't know how many years old it is?

A. No.

Q. Did I understand you to say that you had borrowed \$360 from Mr. Heider to settle with Mrs. Arthur?

A. Well, that is what I know about it, yes.

Q. Was that the same transaction that she had brought suit [677] on against you?

A. That was all settled at that time.

Q. Yes, well now, Mr. Heider was Mrs. Arthur's attorney; was he not, and had brought a suit against you to recover the sum of \$828 that she claimed you owed her? A. I guess he was.

Q. Then you borrowed \$360 from Mr. Heider and paid off Mrs. Arthur on a compromise; is that the idea?

A. Well, it was settled. I mean, that was the figure that was arrived at, and that is what I had to pay.

Q. This White truck that Mr. Ryan asked you about, you said that Mr. Ellis was holding on a bill, he had about \$4,000 due him on a bill; did he not?

A. Well, I don't know the exact amount, but I am sure it was not that large because I had paid him substantial amounts at different times.

Q. Now, you say that the title was in your name with a mortgage to Mr. Heider?

A. Well, I don't know whether it was in my name or not because Mr. Heider was holding the papers on it, and I can't say whether it was registered in my name or not.

(Testimony of Walter Stegmann.)

Q. Had you bought it from Mr. Heider?

A. I bought it from some equipment company in Portland. I can't remember, some tractor outfit.

Q. Well, Mr. Stegmann, I have a certificate from the Secretary [678] of State here on a White Truck which indicates that on November 22, 1948, the title was issued in your name with a mortgage to the First National Bank of Portland for \$3,817.20, and the next transaction appears to be on July 22, 1950. The title was transferred from you to Chet L. Parker, showing the sum to be paid, the registration, the legal owner, and, I believe, the record already shows here that a replevin suit was filed in August of 1950.

Now, don't you remember that transaction of transferring the title over to Mr. Parker?

A. I do not. All I know is I was making payments on trucks to Mr. Heider.

Q. All right, how much did Mr. Weedman pay you for showing him the Cottrell property up in Washington?

A. I couldn't tell you the exact amount.

Q. Approximately?

A. I don't, it wouldn't—I wouldn't know just how much it would be now.

Q. Well, was it a hundred dollars?

A. I think it was more than a hundred dollars, purely from memory though.

Q. For just showing him the corners?

A. Well, I had to make one or two trips up there, it seems like. The snow—at times we didn't get up

(Testimony of Walter Stegmann.)

there, and then we would go up there, and we would have to come back because [679] the weather was so bad that it couldn't be accomplished all in one trip.

Q. How did it happen that you were showing the Weedman Lumber Company Mr. Parker's timber property?

A. Well, I was quite familiar with the corners and lines up around in a considerable amount of that area.

Q. Did Mr. Parker ask you to do it?

A. No.

Q. How did you happen, how did you get in touch with Weedman then?

A. Well, I just don't recall how I did get in touch with him.

Q. When you were over in Hood River at the time this deed was being prepared in Mr. Vawter Parker's office, did you have a copy of that deed or a copy of any draft of deed to anybody besides the one you took over to Mr. Abraham's office?

A. What was that question again?

Q. Did you show a copy of a deed or a draft of a deed that was being prepared in Mr. Vawter Parker's office to anyone else except on that one occasion when you took a copy of the deed over to Mr. Abraham's office?

A. I don't know as I ever showed anyone any copy of that deed. It is possible I may have had some notes of the description of the property.

Q. Did you show any notes or anything of that

(Testimony of Walter Stegmann.)

character to the Parkers, Mr. and Mrs. [680] Parker?

A. I can't recall whether I might have on Saturday or Sunday. I don't know.

Q. You might very well have done so?

A. But I don't remember.

Q. Mr. Bailiff, will you hand the witness Exhibit 29 which is the contract which you made for the sale of different timber to the McCormick Lumber and Manufacturing Company, Mr. Stegmann. I notice that the date is not filled in there. It says the blank day of May. Do you have any way that you can tell about what the actual date of that contract was? A. Well, I don't know——

Q. Let us put it this way. You bought the property on May 14th. About how long after that was it that you made this contract with McCormick?

A. What it was, it must have been within a few days. I mean it was probably a week or so after that.

Q. Who prepared the contract with McCormick Lumber Company?

A. You mean this contract?

Q. Yes, who wrote up that contract?

A. Well, I am not sure whether they wrote it up, McCormick Lumber Company, or my wife may have copied this off of another contract.

Q. Did you have a typewriter at your home?

A. My wife occasionally rented typewriters and was trying to [681] learn typing, and she did a little bit of typing for me.

(Testimony of Walter Stegmann.)

Q. She would rent a typewriter for that purpose?

A. Oh, no, I mean there is different—she would rent a typewriter and maybe type up some contracts, and she would practice on it.

Q. She may have typed this contract at your home; is that your testimony?

A. Yes, it is possible.

Q. Now, I notice there is a witness on that document. Is that Mr. Stanhope? Is he related to you, Mr. Stegmann?

A. Yes.

Q. He is your wife's father; is he not?

A. Yes.

Q. And he works for McCormick Lumber Company?

A. At the time I sold this timber to them he was not working for McCormick Lumber Company.

Q. I see. Now, you had a baby along about the time this Winans transaction was going. Do you recall the date of your baby's birth?

A. That was September 17th, I believe.

Q. September 17th?

A. Yes.

Q. Well, it was August; was it not?

A. Or August 17th.

Q. That birth occurred at the hospital in Newberg, as I [682] recall; did it not?

A. Yes.

Q. Do you recall how long your wife was in the hospital before your baby was born?

A. I don't recall exactly. It seems like she could have went up earlier in the day but I——

Q. That is all I have, your Honor, except I

(Testimony of Walter Stegmann.)

wonder if we may stipulate that the telephone calls that are in evidence here, may we stipulate that—I guess I would have to get those slips to get the numbers from them.

Mr. Buell: 57-A and B.

Mr. Strayer: May it be stipulated with respect to Exhibits 57-A and B that during the months of August, September, 1951, 4984 was the number listed to Mr. Stegmann at his home in McMinnville, and that 4235 at Odell was the number listed to Mr. Paul Winans, and that 4982 was the number listed to Mr. Oscar Parker at McMinnville, and that 41951 at Vancouver was the number listed to Mr. Chet Parker?

Mr. Jaureguy: I take it you have been satisfied by the company that that is correct?

Mr. Strayer: Yes, I understand Mr. Buell subpoenaed the record for those numbers, and that was what was to be——

Mr. Jaureguy: Of course, I am willing to stipulate as far as the Parkers are concerned. I do not know as to the rest. That is perfectly all right, yes, that is all right. [683]

Mr. Strayer: Is that satisfactory to you, gentlemen?

Mr. Krause: Well, Paul Winans' telephone number was not 4235. That was Ethel Winans' telephone. He had no telephone.

Mr. Strayer: I will accept the modification in the stipulation.

Mr. Ryan: May I ask if there are any other Winans' telephone numbers?

Mr. Krause: I suppose there are.

(Testimony of Walter Stegmann.)

(Discussion off the record.)

Mr. Krause: You have Parker's telephone number at Vancouver in the stipulation?

Mr. Strayer: Yes, Mr. Jaureguy has said that that is satisfactory.

Mr. Jaureguy: Yes.

Mr. Strayer: I think the only missing link is whether Mr. Ryan has stipulated now.

Mr. Ryan: 4984, that is the correct number, as I understand it. You had looked it up, as Mr. Stegmann's number?

Mr. Strayer: That is all I have.

Mr. Ryan: That has to be determined whether that is a party line, too.

The Court: The stipulation may be entered.

Mr. Strayer: I think it was a party line; was it not?

The Court: Any further questions? [684]

Mr. Ryan: I might just ask Mr. Stegmann if your number 4984 in McMinnville, was that a party line?

The Witness: Yes, it was a party line.

Q. (By Mr. Ryan): Who was the other party on the line, or who were the other parties on the line, if you know?

A. Well, I know that Oscar Parker was on the same line as my number.

Q. What was his number, 4982 as they said here?

A. As they said here, I believe it was. I am not

(Testimony of Walter Stegmann.)

positive of his number being that, and there was two other people. I am not sure whether it was a House, his name was House, a next-door neighbor. He was on the same line. I am sure that there was another party that was on there. There were four parties on the line, I am sure.

The Court: Is that all?

Q. (By Mr. Ryan): How did they let you know which ring that the party was; was it by rings, so many rings?

The Witness: I don't know any particular rings. It was only one ring.

Mr. Strayer: They have a little different system out there, John, I think a general party line. There was only one ring on each of them.

Examination by The Court

Q. How long had you been borrowing money from Mr. Heider? [685]

A. That goes back quite a ways, your Honor, about, I think, in 1945 or probably before.

Q. Had you borrowed large sums of money from Mr. Heider? A. Quite a large sum of money.

Q. What was the maximum amount you owed Mr. Heider at any one time?

A. Probably in the neighborhood of \$40,000.

Q. What security did you give him?

A. I sometimes gave him a note, and I sometimes gave him a mortgage on equipment I had.

Q. Sometimes he would loan money to you on your unsecured notes; is that right? A. Yes.

(Testimony of Walter Stegmann.)

Q. At the time you were borrowing money from Mr. Chet Parker you were also borrowing money from Mr. Heider; is that correct?

A. I believe I had a few debts to pay yet to him. I mean, there was a small mortgage on——

Q. You owed money to Mr. Heider at that time?

A. Yes.

Q. But you were not getting any more money from Mr. Heider? A. Not at that time.

Q. What interest were you paying Mr. Heider?

A. I don't know just how he figured. It seemed like it was quite steep. I mean, he always—— [686]

Q. Mr. Heider didn't loan you any money at 4 per cent, did he?

A. I think he said it started at six.

Q. Do you mean to say Mr. Heider loans money at 6 per cent?

A. Well, I tried to figure it out at one time, and I didn't come out that way.

Q. Actually, you were paying about 12 per cent to Mr. Heider; were you not?

A. Well, your Honor, I can't say exactly.

Q. Didn't he discount the money to you?

A. He added it all in certain payments, and then so much each money.

Q. So when Mr. Chet Parker wanted 6 per cent you complained about it, and then you got it at 4 per cent; is that right? A. Yes.

The Court: That is all.

Mr. Krause: Now, your Honor, may we call Mr. Linville? I think the attorneys have all agreed that

they would not object to our calling a witness at this time because he is going to be out of the state, as I understood, in a few days, for the next month. [687]

CLYDE W. LINVILLE

was thereupon produced as a witness in behalf of the Defendants and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. Clyde W. Linville.

Q. Where do you live? A. Hood River.

Q. How long have you lived there?

A. Six years.

Q. What business have you been in during that time? A. Real estate broker.

Q. Are you acquainted with the Lost Lake area in Hood River County?

A. Casually, not too well acquainted with it.

Q. You have been up there on Lost Lake, have you? A. Yes, I have.

Q. During the summer of 1951 did you have a customer or client that was interested in buying some property up on Lost Lake? A. I did.

Q. Who was the person?

A. Leon Monchallen from Washington State.

Q. Is he a person who deals in rather large transactions? [688] A. Yes, he does.

Q. What property was he interested in?

A. He was interested in some timber land which

(Testimony of Clyde W. Linville.)

Mr. Winans had some interest in and had discussed with myself and Mr. Monchallen previous to our visit there.

Q. You tell us just what discussions you had with Mr. Winans regarding the sale or purchase of that land.

Mr. Jaureguy: Object to that as hearsay.

The Court: Which land do you refer to?

Mr. Krause: Pardon me just a second. The purpose of this testimony is to show that what we had to sell up there was being considered by another party who knew all about what rights would be sold, who had the money to pay for it, and we want to show the price that he offered us for it, and that bears upon the question as to whether or not there might have been any fraud here because if we had an opportunity to sell exactly the same property for a sum comparable to that sum at which we did sell it to persons knowing exactly what the title was, that shows what the value of the property was and what the value of the interest was that we were selling.

Now, we have been charged here, your Honor, with selling something of no value. That is one of the charges made by the parties here in this case.

Mr. Jaureguy: Well, all he is saying is that the thing [689] that he is trying to prove he considers important, but that does not get away from the fact that he is trying to prove it by hearsay.

The Court: How could he prove it, Mr. Jaureguy?

(Testimony of Clyde W. Linville.)

Mr. Jaureguy: I don't know how he could prove it.

The Court: I was thinking about the same thing. It is hearsay so far as your client is concerned.

Mr. Jaureguy: So far as Mr. Parker is concerned.

Mr. Ryan: And as far as Mr. Stegmann is concerned.

The Court: And he is being charged with fraud by the Title and Trust Company, I understand.

Mr. Krause: That is correct. For that matter, we are also being charged by Mr. Jaureguy's client that we have defrauded him because he says that we sold him something at no value and represented that we owned it. That is exactly the same position that the Title and Trust Company is in, so we are certainly going to be entitled in this case to show the value of the land and the interest that we have in it up there, and there is not any better way of proving that value than a bona fide offer on which a deposit had been tendered, and that is what this is.

Mr. Strayer: I am not making any objection, your Honor, on behalf of the Title and Trust, and perhaps I should not interrupt here, but it does occur to me that it may be relevant on one more thing. As I understand, Mr. Winans [690] claims that he had granted the first option to another party, and he was not free to sell to others until he had offered it to the other party. Now, I understand that refers to this transaction.

(Testimony of Clyde W. Linville.)

The Court: Yes, I know that, but the fact that there may have been a complete divulgence to this other party does not necessarily mean that the Winans completely divulged the condition of the title to the Parkers or to Stegmann.

Mr. Krause: We do not offer it for that purpose at all, your Honor. That is not the purpose of the testimony at all, but we have got to show what we were offering to sell to this gentleman in order to have it comparable to the other transaction.

The Court: Well, I am going to overrule the objection and let the evidence come in, at least so far as the Title and Trust Company is concerned.

Mr. Ryan: We enter the same objection on behalf of the defendant Stegmann.

The Court: You may have exceptions to the ruling. Go ahead.

Mr. Krause: May we have the question, Mr. Reporter?

(Question read.)

The Witness: Do you refer to the tract adjoining Lost Lake and the 40-acre tract back of it or to another tract? [691]

Q. To those two, the one on Lost Lake and the one in back of that tract.

A. Yes, your question is what discussions did we have with Mr. Winans concerning the sale of that property?

Q. That is correct.

A. As previously stated, I think—I think I pre-

(Testimony of Clyde W. Linville.)

viously stated that we went out to see other lands, other timber.

Q. Who is "we" now?

A. Mr. Monchallen, Mr. Winans, and myself, went there to see other land and other timber than that involved in this action. At some time when we were approximately ready to return Mr. Winans made some mention of a tract, of this tract of land which his family had owned for many years and which he apparently attached considerable sentimental value to or attachment to because of it having been held by his father and family through many years, and Mr. Monchallen said, "Could we see it?" He said, "yes, it is not very far from here. It is just a little ways out of the way." So we walked over on to the fractional lot, and Mr. Monchallen became much interested in the quality of the timber and the size of the trees and began converting some of those trees into board feet and said, ask Mr. Winans what he would—if they were interested in selling it, and before—in the course of that conversation Mr. Winans explained that the farmer had owned that fractional lot, the [692] Government lot for many years and had cleared title to it. Then at considerable length he explained the status of the title on the 40 acres immediately in front of the fractional lot and wound up by saying, "I don't really know whether we have anything to sell further than the 25.88 tract," and he also explained that, or revealed that in—I have forgotten the year. I believe it was about 1942, when the title had

(Testimony of Clyde W. Linville.)

passed to his sister, the matter come up of getting title insurance on the tract, and they had secured a title policy on it, and afterward the title company had compromised and paid off on a lesser amount than the amount of the title policy, and wound up by saying, "I don't know whether we have good title to this tract or not. The family had paid taxes on it for many, many years. We have always thought that we could through Congressional action, get good title." He added, "I don't know whether anyone else could do that or not." Do you want me to repeat the conversation?

Q. Well, was there anything said now with respect to selling the property, or was any offer made by Mr. Monchallen for the property?

A. I had Mr. Monchallen aside, and I said, "Are you interested in buying this?" He said, "Oh, yes, I am." And he made some rather quick estimates on the value of the timber on the 25-acre tract, and commented that there were [693] many peeler logs on it, and it was good quality stuff and fairly easy to get out and estimated the footage value on per thousand feet on it on the basis of quality of the standing timber, and I would not recall just exactly how the value of \$80,000, whether he mentioned that as his price on it, but anyhow I asked him, "Would you give \$80,000 for this?" He said, "Yes."

The Court: \$80,000 for what?

The Witnees: \$80,000 for the fractional Government lot and the 40 acres back of it.

The Court: For both of them?

(Testimony of Clyde W. Linville.)

Q. (By Mr. Krause): For both of them, both pieces?

A. For both pieces; that is right. In his reply he stated that there was so much timber at so much per thousand feet on the fractional lot, and he gambled on the 40 acres of questionable title, what would be in what to him seemed to be a rather nominal amount, which was considerable value, however.

Q. Was anything, any agreement made between Winans and Monchallen to sell and buy the property at that time?

A. No, Winans said, "We have not given consideration to selling the tracts. There are interests of all the members of the family involved, and before we would—before I would be able to give you any answer as to whether it is for sale or not, I would have to discuss it with my brothers and [694] sisters." He was rather noncommittal as to whether they would be interested in disposing of it or whether they would sell.

Q. You are referring to Paul Winans?

A. That is right.

Q. You are referring to Paul Winans?

A. Paul Winans, who represented the Winans heirs.

Q. All right, can you tell us about when you were up on the property; what year and about what month?

A. My recollection is that it was some time in June of 1951, approximately that, although I would not be sure within 30 days. It was rather early in the summer.

(Testimony of Clyde W. Linville.)

Q. Were there any further negotiations between Mr. Winans, you, and Monchallen, for the sale of this property?

A. Yes, a number of times Mr. Monchallen and Mr. Winans met in my office, and the three of us discussed the matter. I would say from four to six times or approximately that, quite a number of times.

Q. Just before Mr. Winans gave an option—well, do you know about the option given to Stegmann in this case?

A. I knew of it indirectly. I knew of it through Mr. Winans telling me of the progress of his negotiations with Stegmann.

Q. Prior to the time that you were informed that Mr. Winans had given the option, just immediately prior to that, [695] were there any further negotiations between Monchallen and Winans?

A. Yes, at one meeting Monchallen gave me a check as an earnest money deposit of a thousand dollars, and was interested in having an earnest money agreement made with Winans based on his deposit of that check.

Q. That was at the \$80,000 price?

A. That is right.

Q. Did it involve conveyance of anything other than the right, title, and interest of Winans in the 40 acres?

The Court: Of the 40 acres, are you talking about?

(Testimony of Clyde W. Linville.)

Mr. Krause: In the 40 acres.

The Witness: Let me get the question clear in my mind, please.

Q. (By Mr. Krause): What I wanted to know was when Mr. Monchallen gave you this thousand dollar deposit, what were the terms to be, and what kind of title was to be delivered?

A. He was to give—it was understood that there was good title to the Government lot, and a questionable title to the 40 acres and no responsibility on the part of the sellers to perfect title in the 40 acres.

Q. What was the conclusion of this negotiation between you, Monchallen and Winans?

A. At some point along about the time that the earnest money deposit was given to me, about the time—it might [696] have been before or after—Mr. Winans told us, meaning Monchallen and myself, that he had another party who was showing an interest in the purchase of the property and there were a number of conversations between Mr. Winans and myself, and sometimes Monchallen was present and sometimes he was not, but there were many in which—I think there were quite a number of times in which—the conversation was between Winans and myself, in which it finally came out that he had a tentative offer of \$100,000, I believe the amount is correct, from Stegmann, for the purchase of the property, the indentical property, as it was being considered by Mr. Monchallen for purchase.

Q. Were there any discussions as to whether Monchallen would meet that price?

(Testimony of Clyde W. Linville.)

A. Mr. Monchallen told Mr. Winans in my presence that \$80,000 was the top figure at which he would be interested in the property, and Mr. Winans said, "But I do have a commitment of sorts to you. I have an obligation to you, and I feel that you have a right to be considered in this." But Monchallen assured Mr. Winans that if he could get a greater amount than he was offering, it was quite all right with him if he accepted the greater amount and that he should accept the greater amount.

Q. At that time, Mr. Linville, do you know whether or not Mr. Monchallen was financially able to handle the \$80,000 [697] transaction?

A. I think he was, but I never—I don't know what kind of a financial statement he could make. I do happen to know that I sold a ranch for him about the time with approximately a hundred head of cattle on it for \$85,000 I believe the figure was.

Q. Had you handled any other sales or purchases for him during—had you handled any other sales or purchases for him during the period immediately preceding this? A. For Mr. Monchallen?

Q. Yes. A. I had not.

Mr. Krause: You may cross-examine.

Cross-Examination

By Mr. Buell:

Q. Mr. Linville, in the negotiations between Paul Winans and Monchallen which you sat in on, did you consider yourself as the, as acting for Monchallen or Winans or both of them?

(Testimony of Clyde W. Linville.)

A. That is a good question. I never was quite sure of the answer myself.

Q. Did you expect to receive a commission for broker's fee out of the sale if it were completed?

A. I did. [698]

The Court: From whom?

The Witness: From the seller. I had no listing agreement with Mr. Winans, but I think I must have had an understanding with him; however, I would not say positively that I had ever said to him that, "I will charge you so much commission on the sale." But I think that he understood and I understood that I was acting as a broker for him. In a small community such as Hood River where we know our buyers and sellers fairly well, we take many things for granted and I probably not as particular about having signed listings or having written agreements as is common practice in such places as Portland.

Q. Mr. Linville, on the first occasion when you and Paul Winans and Mr. Monchallen were on the Winans' Lost Lake property, how much time did you spend there on the 65 acres?

A. Oh, I would say any place from an hour to two hours.

Q. To your knowledge, did Mr. Monchallen ever examine the property again?

A. As I recall, he and his wife and children went up there on a week end and told me that they stayed overnight and that he spent some time on the property the following day, but never when I was pres-

(Testimony of Clyde W. Linville.)

ent. He didn't make any further examination of the property.

Q. Was there any disclosure as to the fact of the Government's claim of ownership and the loss that the Winans [699] collected under the other policy of title insurance? Was there any discussion of that on any other time other than when you were up there on the property?

A. Yes, I remember distinctly of discussing the matter at one other time when Mrs. Monchallen, who is a practicing attorney or has been a practicing attorney, was present, and Mr. Winans explained to Mr. and Mrs. Monchallen his thoughts in connection with an attempt to clear title on the 40 acres, and Monchallen expressed the opinion that through their acquaintances with one of the members of the Oregon Delegation, and I am not sure which congressman it was, that they would be able to have introduced in Congress a measure to clear the title to the tract if they should acquire it.

Q. Mr. Monchallen was interested in the property, the timber values; was he not?

A. That is right.

Q. Not for recreational? A. Not at all.

Q. Was that Representative Norblad that he was——

A. It could have been. I just remember it was a member of the Oregon Delegation that he had in mind. I think he had some acquaintance, or perhaps might have been a friend.

Q. Do you recall having made any inquiries or

(Testimony of Clyde W. Linville.)

setting in motion any inquiries, Mr. Linville, as to the reliability [700] or financial responsibility of this Mr. Stegmann who was the other prospective purchaser of the Winans' property?

A. Yes, I do.

Q. Can you place that as to date at all as to when——

A. No, I can't. It was some time, I would say it was probably a week or ten days—that is with considerable latitude—before this time, before the date on which the first agreement was signed between Stegmann and Winans.

Q. What is your Hood River telephone number?

A. 3544. That is my office number I suppose you refer to?

Q. Yes. A. That is right.

Q. Was there ever any form of earnest money agreement prepared by you, or did the negotiations get no further than the making out of the check?

A. I think they had—I will change that statement. There had been an understanding arrived at the purchase price, and it had never gotten into a written earnest money agreement, and there was between Monchallen and Winans as to the amount of nothing in the proceedings to bind or to hold Mr. Winans or Mr. Monchallen, either one, to the agreement.

Mr. Krause: I have no further questions.

The Court: Mr. Jaureguy? [701]

(Testimony of Clyde W. Linville.)

Cross-Examination

By Mr. Jaureguy:

Q. You have lived in Hood River about how long? A. About six years.

Q. Then you were not living there in the Spring of 1944?

A. I think I went there in '46, '47, perhaps.

Q. You have a lot of dealings with the title company? A. Yes, I do.

Q. Had you ever heard of this loss that the title company had paid on those 40 acres?

A. I have been asking myself that question. I cannot recall when I first heard of—whether it was in connection with this negotiation of whether I had heard of that before. I am not quite sure when I had, first had knowledge of the thing that you refer to.

Q. In your business as a real estate man, you might have heard about it before you went up there?

A. It is very possible that I did. I am not sure.

Q. I take it, a real estate man would hear of that as soon as the ordinary resident of the city?

A. He might.

Q. But you now do not know whether you knew about that?

A. I would not be able to say definitely when the knowledge of that first came to——

Q. Did Mr. Winans tell you how much the title company paid [702] him and his family?

(Testimony of Clyde W. Linville.)

A. Somebody did. I will not say whether Mr. Winans told me, but I knew something of the details of the transaction, yes.

Q. Then you learned that before you went up there with Mr. Monchallen?

A. Again, I am not not going to let you pin me down to a definite answer on that. I don't remember. I know that now it seems that I had knowledge of it before that time, but I am not sure that I did.

Q. But do I understand now—I am not trying to pin you down to something unawares on your part—I want you to understand that. When you were up on the property looking at it, did Mr. Winans at that time tell you that the title company had paid something on that?

A. He disclosed the whole story of the thing in great detail. I would not say that he gave it to me; he gave it to Monchallen. I was present, and he gave it in detail of all the, from its inception from their acquiring the land and the whole story all the way through. Now, I am not sure whether that portion of it in which they had, in which the title, the previous operators of the title—I think that was the Pacific Abstract Company—had paid off there or not. I am not sure whether that was the first time I had heard of it or not, that is, never from, I mean [703] that he had never told me of the status of that title before, but I am sure that he told it in detail to Monchallen at that time when I was present.

Q. Well, did he tell you that the title, that the

(Testimony of Clyde W. Linville.)

title policy that he obtained at that time was purchased in connection with some sales he was trying to make to the Government?

A. I thought it was an exchange, but I am not sure about that. I believe it was an exchange, and I might be wrong about that.

Q. Yes, you are correct. Can you tell us what he said about that?

A. I believe he said, his remarks was that the Forest Service said, "The Federal government already owns that land. You haven't anything to trade us." I believe that is what he, or about the words that he used in telling of the result of that attempt to exchange that with the Forest Service.

Q. Well, how did the title insurance policy work into that?

A. Well, I am sure I don't know. I know he made——

Q. I mean, what did he say about it; that is what I am asking.

A. Well, that I would not be too particular about, because I was not interested in the title, how it worked out. I paid attention to the final result of it, of the situation.

Q. Did he tell you whether he ordered the title policy after [704] or before the Federal government told him his title was no good?

A. That I wouldn't know.

Q. All right, sir, thank you.

The Court: Mr. Ryan?

Mr. Ryan: No further cross-examination.

(Testimony of Clyde W. Linville.)

The Court: That is all, Mr. Linville. You may be excused.

(Witness excused.)

Mr. Buell: We will call Paul Winans. [705]

PAUL WINANS

was thereupon produced as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Winans, where do you live with reference to Hood River?

A. Eleven miles southwest.

Q. What is the nearest little community?

A. Small community, Dee, Oregon.

Q. Whereabouts? A. Dee.

Q. Mr. Winans, for the purpose of perhaps clarifying where this property is that we have been discussing here, I will ask the Crier to hand you Exhibit 317, and ask you if that is a rough pictorial sketch of the Hood River Valley; is it not?

A. I am familiar with it.

Q. And is the location of your home indicated on there?

A. Well, very closely to Dee is located where, perhaps a mile north or northeast of Dee.

Q. How far from your place is it up to this par-

(Testimony of Paul Winans.)

particular property on Lost Lake that was sold to the Parkers? [706]

A. Seventeen miles with perhaps another three-quarters of a mile from the lake, the end of the road to the property—rather, from the ranger station to the property.

Q. Among the other defendants in this case are Ross M. Winans. That is your brother, is it not?

A. Correct.

Q. And Ethel Winans, your sister?

A. Yes.

Q. Audubon Winans, your brother?

A. Yes.

Q. And Linnaeus, your brother? A. Yes.

Q. Would you tell us when it was in 1951 that you were first contacted by Walter Stegmann in connection with the proposed sale of this property?

A. I don't have the exact date. It was just a casual thing at the beginning, but I fix the date as nearly as possible on or about July 10, 1951.

Q. Where did that take place?

A. On the highway, near my mail box.

Q. How was Mr. Stegmann attired when he arrived there; what was he dressed in?

A. Well, some portion, some part of that I noticed particularly. He was wearing a large western hat, light-colored hat, and I believe a sort of a blazer jacket, as I remember [707] it. I would not be quite sure about that, and a tight-fitting pair of faded blue overalls, and I believe some kind of cowboy boots, but that I won't be quite specific about.

Q. Did he introduce himself to you by name?

(Testimony of Paul Winans.)

A. He did.

Q. What did he tell you he wanted with you?

A. He said he was looking for Paul Winans.

Q. Had you ever seen him before?

A. Never.

Q. I suppose you acknowledged you were Paul Winans, and then what did he say he wanted?

A. After my acknowledgment he said that he was looking for the Winans who owned some property at Lost Lake.

Q. Go ahead, what was the discussion that followed?

A. I think the next immediate question was—no, his next move was a statement, I think, that he was looking for some place back as far away from people as he could find, a remote, primitive spot, as I remember, and I told him we had a very beautiful situation somewhat like that there on the lake, and he followed up shortly by saying he would like to buy something like that and was it for sale.

Q. What did you tell him about whether or not it was for sale?

A. I did not give him any encouragement. I told him it was an indeterminate matter; that we had not been thinking [708] about selling it for a long time, and that we might not want to sell it at all.

Q. Did you tell him at that time that there were other persons besides yourself who were interested in the property? I mean, who claimed to own an interest in the property?

A. Beg your pardon?

(Testimony of Paul Winans.)

Q. Did you tell him that there were other persons besides yourself who claimed to own an interest in the property?

A. I did, the family property.

The Court: Will you clarify that. I do not know what it means.

The Witness: Specifically, that the whole family were interested in it, that is, brothers and sisters. I won't say that all the brothers and sisters, but I will say that there were several of the brothers and sisters that were interested in the property and that I do not know at this time whether—yes, I will change that—because he asked me about the Winans that owned the property, and I told him Ethel Winans, and, therefore, I did represent her as the actual owner.

Q. (By Mr. Buell): Well, to clear up just that point while we are on it, your father and mother had deeded the property to Ethel in December of 1943; is that correct?

A. That is right. [709]

Q. Your father at that time was sick?

A. He was.

Q. For what purpose was the property conveyed to your sister, Ethel?

A. For convenience in handling it, due to my father's illness.

Q. Anything else? Who was to be the beneficial owner of it after the conveyance to your sister?

A. I don't think that was gone into very deeply, but actually, the first consideration was for the good and the care of my father and mother.

(Testimony of Paul Winans.)

Q. And then what? A. And then what?

Q. I mean, following the—what was she supposed to do with the property, or what was it considered in the Winans family, that she was supposed to do with the property following the death of your father and mother?

A. From then on it would be in my sole discretion what she did with it.

Q. Was that the understanding of all of the brothers and sisters?

A. It was of those who were immediately concerned in the parents' immediate care.

Q. Well, who were the ones who were immediately concerned?

A. Ross M. Winans, my brother, myself, Ethel Winans [710] especially.

Q. What about Audubon and Linnaeus?

A. Oh, I overlooked them. Them, too.

Q. And Mrs. Clara V. Hand?

A. Well, following the others she would be next in line, although she did not live immediately near the folks.

Q. There was no written document setting forth the terms under which your sister Ethel was to hold the property, was there?

A. No, there never was.

Q. Now, going back to this first meeting with Mr. Stegmann, did you direct him as to how he could go up and see the property, in other words, how to find it?

(Testimony of Paul Winans.)

A. No, he didn't ask that question. I don't think it was discussed.

Q. Didn't he tell you that he was going to go up and take a look at it?

A. No, he did not at that time.

Q. How did the first meeting between you end?

A. Pardon?

Q. How did it end? Was there any understanding or agreement between you and Mr. Stegmann as to what he was going to do with reference to the property?

A. He asked for the price on it, or a determination of whether or not we would sell it, and I told him that it [711] would be considered, and we would be glad to let him know.

Q. Did you put a price on it at that time?

A. No.

Q. Was this after Mr. Monchallen had looked at the property on the occasion that Mr. Linville just testified to a few minutes ago?

A. Yes, afterwards.

Q. Had you given Mr. Monchallen a price on the property at the time Mr. Stegmann first came up to see you? A. No.

Q. During your first discussion with Mr. Stegmann, was the question of the amount or type of or quality of the timber on the property discussed at all? A. Not at all.

Q. Was there any discussion of logging or the logging industry in that first meeting?

A. Not at all.

(Testimony of Paul Winans.)

Q. Then when was the next time that you saw Mr. Stegmann?

A. I would fix that for a period in there—I want to say that dates are going to have to have a little margin one way or the other. I kept no record, but I would say from three to five days afterwards, Mr. Stegmann called again.

Q. Whereabouts?

A. I think that he called at my home. [712]

Q. Was there anybody else present on the occasion of his second call?

A. My personal family were present.

Q. In the immediate presence of Mr. Stegmann?

A. Well, he called at the house, and I know that they knew that he was there.

Q. Were they in a position to overhear any conversation between you?

A. They might have overheard a little of the early conversation.

Q. What did Mr. Stegmann first say when he arrived on this second visit?

A. Well, that is not so outstanding in my mind, but I do know that he called to find out whether or not I had considered the matter and could let him know what we would do as to the sale.

Q. What did you tell him?

A. I told him I just had not gotten around to it yet.

Q. Did he indicate whether or not he had seen the property by that time?

(Testimony of Paul Winans.)

A. If he indicated anything at that time he indicated that he had not.

Q. Did anything else develop in the course of that second meeting with reference to the property?

A. No, I was not ready to make any commitment. [713]

Q. Was he alone when he arrived at that second meeting? A. He was.

Q. Were any arrangements made for a subsequent meeting?

A. No, I think I just put him off, saying that I just had not got around to it but that we would think it over and decide whether or not we wanted to give him or anyone else consideration.

Q. By the time of that second meeting, had you as yet given any price to Mr. Monchallen?

A. No.

Q. All right, then, when was the next occasion you saw Mr. Stegmann?

A. Oh, I saw him two to three days later on, but running about somewhere between the 15th and 20th of July, 1951.

Q. What were the circumstances of that meeting? I say, what were the circumstances of that meeting?

A. I was thinking. I wanted to keep the sequence correct. If you will give me a little time I will have it that way.

The third meeting was in Hood River.

Q. Whereabouts in Hood River?

(Testimony of Paul Winans.)

A. Approximately at Ninth and Oak Streets, Hood River.

Q. Was that a pre-arranged meeting?

A. It was not.

Q. How did you happen to meet him there, then?

A. Mr. Linville's residence is immediately adjacent to the [714] location I have mentioned. I drove up Oak Street to make a call on Mr. Linville. I parked on the north side of the street opposite Mr. Linville's residence. Mr. Linville's residence is on the south side, and I had scarcely gotten out of the car until Mr. Stegmann's car pulled in behind me and hailed me.

Q. What did he say to you?

A. It was a resumption of his request for an answer with regard to the sale of the Lost Lake property.

Q. What did you say in reply?

A. I told him that—he pressed for an answer on it, and I told him that it would take, that I would give it full and complete attention and would give him some kind of an answer as soon as possible.

Q. Did you indicate that you would have an answer within any specific period of time, such as a week or ten days?

A. No, I made no representation as to that.

Q. Was anything else discussed between you and Mr. Stegmann on that day?

A. Yes, inasmuch as we were getting down to cases on this thing, I made a complete statement of some important factors.

(Testimony of Paul Winans.)

Q. Well, what are the important factors that you made a complete statement of?

A. I recall particularly that I went over once again the matter of the status of the title to the 40-acre tract, the [715] northeast quarter of the northwest quarter of Section 16.

The Court: Tell us what you told him as best you can remember.

The Witness: Let me think one moment, now. Well, in substance, I told him that we did own a title to 65.88 acres—or, rather, the maps and our claim of ownership embraced 65.88 acres, but that 40 acres of that was not in a condition to offer for sale and that we would not offer it for sale; it would not be considered as for sale. This was a reiteration of what I had told him before.

Q. (By Mr. Buell): On which other meeting?

A. Pardon?

Q. On which other meeting?

A. I place that as the second meeting.

Q. Did you do anything further than telling him that you would not consider offering the 40-acre tract?

A. I simply told him that we would give it full and complete consideration and that we would reach a decision on the matter.

Q. Had you by that time told him what the defect in the title to the 40-acre tract was?

A. I did. I had before that.

Q. Had you told him about the issuance of the Pacific Abstract Title Insurance?

A. I had and did at that time. [716]

(Testimony of Paul Winans.)

Q. What about the loss that your sister had collected on the policy?

A. I explained that fully as part of the information I wanted to convey.

Q. Were you going to see Mr. Linville on that particular day with reference to this property, the Lost Lake property?

A. I think it was with reference to that. I had other matters from time to time that I saw Mr. Linville on, but I am quite sure that I was calling and would discuss that matter with him.

Q. When was the next time you saw Mr. Stegmann, following the meeting in front of Mr. Linville's home?

A. At the service station across the highway from my home.

Q. About when was that fourth meeting?

A. To get a little closer there, it was on or about August 1, 1950.

Q. Was Stegmann alone on this occasion?

A. He was alone.

Mr. Jaureguy: He said 1950.

The Court: You mean 1951?

The Witness: Did I say 1951?

The Court: No, you said 1950.

The Witness: Pardon me, it would be 1951.

Q. (By Mr. Buell): Was there anybody else with you when Stegmann arrived? [717]

A. I can't say specifically that there was; therefore, I will say there was not.

(Testimony of Paul Winans.)

Q. What happened at that fourth meeting, on or about August 1st?

A. Well, we reached—I won't say an agreement. We reached an outline of the price we would sell it for.

Q. Who made the first overture? Did you make an offer, or did he make the first offer?

A. Well, all this time he had been making offers, and he was simply waiting for his answer. I never made an offer.

Q. Well, going back a moment then, had he offered any cash figure on either the first, second, or third meetings?

A. No, I am pretty sure he had not.

Q. All right. I take it on this August 1st meeting that actual figures were discussed?

A. That is right.

Q. All right, who made the first offer?

A. He did.

Q. He did? A. Yes.

Q. And what was that?

A. That might need a little clarification, but I will set up—I don't want to take the valuable time of this Court, but to make it clear I imagine that I had better say——

The Court: Just give us the full conversation. That is [718] what we want to know.

The Witness: Well, I would have to refer back to the meeting with Mr. Linville, following when my meeting with Mr. Stegmann broke up at Ninth and Oak Streets, in Hood River.

(Testimony of Paul Winans.)

Q. (By Mr. Buell): All right, go ahead.

A. I immediately went across the street and saw Mr. Linville at his residence, and he, too, all this time, or his client, Mr. Monchallen, was waiting for an answer, and I—we had been unable for one thing, to arrive at a figure that we thought we ought to ask for the property, for the reason that we had been giving it no consideration for a very long time. I did not know what it was worth, and we did not care much whether we sold it or not.

So, I set it up this way to Mr. Linville. We talked about the value price, and I set it up. I said, "About 30 years ago, my father thought that property was worth \$25,000. If that was true then, in this day of the devaluated dollar, perhaps on a ratio of 3 to 1, what would that figure?" There was no comment from Mr. Linville, and no further advance by me at that time. It was just left with no commitment as between ourselves. That set me in the position when Stegmann arrived, and it was what I had told him in this conversation, that I would reach a decision when he asked me again at this fifth meeting at the service station if we had an answer, and I repeated to him the same formula precisely. Then we [719] drifted off of that for a little, some general conversation, and Mr. Stegmann came back after a little bit and said, "You know, that is about what I thought, around seventy-five or eighty thousand for that property." Mind you, we were discussing or would discuss nothing else but the 25.88 acres.

(Testimony of Paul Winans.)

Q. That is what you, at that time, told him at the previous meeting and in front of Mr. Linville?

A. All the way through, both he and Mr. Linville and Mr. Monchallen.

Then I come right square back. I said, "Then you would go \$80,000 for that 25 acres less the reservation." I had already set up that we would require a reservation of some kind for the use of our family. He said unequivocally, "Yes."

Q. What did you say to that?

A. Well, he went a little farther. There had been some discussion about possibly his going to be quite interested perhaps in coming into a housing proposition I had there in which some financing had been mentioned, and at that time he wanted to know how much money I needed. I told him I would like to start with anything from ten thousand up, I think, indicating a top figure of perhaps fifty thousand. He then went on to say—I told him that on this \$80,000 figure that I would first have to go back, as a matter of honor, to Mr. Linville and his clients before I could close [720] with him. Then he advanced a suggestion, "If I could get that deal I would let you have ten thousand on that housing project."

Q. What was the next, was there anything else said at that fourth meeting?

A. Yes, indeed. After a little time he said, "Well, what would you take to include the back 40?"

Q. What did you say to that?

A. I said, "Do you mean that, knowing all about

(Testimony of Paul Winans.)

the condition of that title, that you would want to buy it?"

Q. What did he say? A. "Yes."

Q. Go ahead, what was the rest of the discussion about the 40 acres?

A. Well, I know that I went to a lot more trouble to tell him the whole picture as discouragingly as I could. I simply told him that the condition of the title was not any condition for us to do business with and that it would not be considered, and that was my immediate answer, and then following that, why, the thing was kind of tumbling over in my mind, and I made this statement. I said after he sort of pressed for it, I said, "I will tell you what we will do. We will increase the reservation that we are making out of the 25 acres from the maximum of five acres to 8.88 acres and throw in whatever we have in the way of [721] right to the back 40 for a full hundred thousand dollars," but with the reservation that I would first have to have time to fully consider and reconsider whether or not we would go on it at all and also give him, further, that time to consider whether he wanted it. No commitment as to the back 40, the difference in price, the advance was \$20,000.

Q. Was there anything said at that fourth meeting as to when either one of you would have a definite answer for the other?

A. I told him that I would first have to submit the whole proposition to the prior client. After that

(Testimony of Paul Winans.)

I would be in a position to possibly close with him if the other client did not take it.

Q. Did he say that he would contact you next?

A. I believe that it was set up for about a week to give me time to submit it to Mr. Linville and Mr. Monchallen, and in about a week he would return.

Q. Did anybody else overhear any of those discussions in this fourth meeting that you know of?

A. No, I think I will have to say "no" to that. I know of no one else present.

Q. By the conclusion of this fourth meeting had there still been any discussion of the timber or the value of the property for logging or timber purposes? [722]

A. Pardon, are we talking about the fifth meeting or the fourth?

Q. I think you have only identified the four meetings so far, one on or about the 10th, the second on or about the 14th, and the third in front of Mr. Linville's home sometime between the 15th and the 20th.

A. The third meeting is when—let's see, first is original appearance, second when he arrived and I took him down and I showed him all of the—a lot of my property.

The Court: All of the what?

The Witness: I showed him a lot of my property, not timber. That would be the second meeting. The third he came, and I know that his wife and his child were present. The fourth meeting was the meeting in front of Monchallen's house, and the

(Testimony of Paul Winans.)

fifth is the one where we are getting down to some definite determination.

The Court: Are you thinking of Linville's house and not Monchallen's house?

The Witness: Not Monchallen, Linville's.

Q. (By Mr. Buell): Then to drop back a minute, I don't think we covered the third meeting at all. Was anything in particular at all discussed at the third meeting when Mr. Stegmann's wife and child were along?

A. It was just sort of repeating of the the other elements, and I know my wife and children visited with Mrs. Stegmann [723] while I talked with Mr. Stegmann.

Q. All right then, following this fifth meeting when the figures were first discussed, what did you do next with regard to the property?

A. May I have the preceding questions and answers so I can keep the continuity?

Q. I think I could summarize it.

A. That will be fine.

Q. You had just finished telling us about arriving at a possible contingent figure of \$20,000 to throw in your interest in the back 40, subject to your talking it over with the family and submitting any firm figure that you might reach with Mr. Linville to relay to Mr. Monchallen before you could commit yourself to Stegmann.

A. I believe excepting one incident.

Q. Yes.

(Testimony of Paul Winans.)

A. He had previously stated that he would give a \$10,000 loan for other purposes.

Q. Yes, you have covered that.

A. I then brought that up in saying—in setting this proposition up, and I said then, “You would go for that ten thousand dollar loan?” And I looked him right square in the eye and he said, “Yes,” but his eyes blinked a little.

Q. That was about all that happened at that fifth meeting?

A. I think that just about closed the meeting, so far as [724] we got at that time.

Q. Then did you arrive at any conclusion with the other members of your family as to what kind of a firm proposition you would make first to Monchallen through Linville and second to Stegmann if Monchallen turned you down?

A. Yes, I kept in close touch with what was going on with the immediate members of the family.

Q. How long did it take you before you arrived at some firm figure that everybody was in agreement upon for you to offer?

A. I think after I discussed it with the family it was more or less approved with being left to my judgment as to what was best to do.

Q. Well then, what was the next step that you took after you arrived at the figure that you were going to offer the property at?

A. We were getting down to a deal then, and I had my promise, my commitment to submit it to Mr. Linville and Mr. Monchallen, and I think I quite

(Testimony of Paul Winans.)

immediately went into Hood River, perhaps not that day but quite soon.

Q. Could you give us any approximate time as to that submission of the figure to Linville and Monchallen, the date? A. The date?

Q. Yes.

A. I am quite sure the date was August 3, [725] 1951.

Q. Was Mr. Monchallen present at the time the figure was submitted?

A. He was not present at this call to Mr. Linville. The purpose of that and the arrangement there was to get Mr. Monchallen to come to Hood River and consider the proposition that I had. I know that I outlined the Stegmann proposition to Mr. Linville then.

Q. That is the same proposition that you have just got through telling us about a moment ago?

A. Yes.

Q. Did you tell Mr. Linville then that Monchallen could have the property for a hundred thousand dollars?

A. I told him what the proposition was and that he still held the preference.

Q. And that you were in a position to speak for yourself and the rest of your members of your family in making that offer?

A. Certainly.

Q. Then did you meet with Mr. Monchallen and Mr. Linville personally following that call to Mr. Linville? A. I did.

(Testimony of Paul Winans.)

Q. And outlined the same proposition to them?

A. I did.

Q. What did Mr. Monchallen reply to your offer?

A. Well, in this connection the title status and the [726] insurance adjustment, title insurance adjustment and all that sort of thing were all covered fully, and the fact that there was a question of title there that might not be able to be confirmed definitely, and I know that I included my theory of curing that title, and that Mr. Monchallen seemed to think that my plan was feasible of getting a bill through Congress, a private bill, which, of course, would be enacted into the law and would make our title good. I know he said that—I told him who I was using in the matter, that it was being, would be submitted to Senator Cordon, and he said that he was in close touch with and would use Mr. Norblad if he got it and took it over.

Q. Well, go ahead with your explanation of what happened at that meeting with Monchallen.

A. Monchallen come in, and I don't know whether it was brought out directly, but I do know that he had been at Lost Lake a second trip, and I think he had looked the property over pretty carefully.

Q. Well, now, you cannot testify as to what you think had happened, just what you know about that.

A. I withdraw that statement.

He said after consideration that he would go for \$80,000 for the property with a similar reservation of acreage to the family, that he would want in-

(Testimony of Paul Winans.)

cluded whatever wood in what had been referred to as the back 40 at the price [717] of \$80,000 as that was all he could see in it, and as far as he would go.

Q. Did he make that as a cash offer, or was that to be on time or payments or what?

A. He said that he would make it a firm offer here and now, and he wrote out the check for a thousand dollars as earnest money.

Q. In your presence? A. In my presence.

Q. Who was the check payable to?

A. I think it was payable to the Linville Agency, deposit of earnest money.

Q. Was anything else said?

A. Considerable.

Q. Well, did he tell you that he would not go up, he would not meet the hundred thousand dollar proposition?

A. He did say that \$80,000 was all that he could see in it.

Q. Did you tell him that you were still going to see if you could get a hundred thousand dollars from Stegmann? A. I did.

Q. Then had you by that time set in motion any inquiries about Mr. Stegmann's financial responsibility? A. I had already done so.

Q. Through whom?

A. Oh, I tried an approach through the Credit Association [728] in Hood River. I tried to see if the concern where we sold logs, the Bellford Lumber Company, could get anything on him through a

(Testimony of Paul Winans.)

Dun and Bradstreet report. I read a letter to Mr. Brocker in Portland suggesting, concerning the information that Mr. Stegmann gave me to see if it could be verified, and I had the Hood River Branch of the First National Bank also put an inquiry through the McMinnville Bank, First National Bank of McMinnville, Oregon.

Q. Following the meeting with Mr. Monchallen and Linville when Monchallen made an offer you have just referred to, what was the next time that you next saw Stegmann?

A. I next saw Stegmann the evening of August 10, 1951.

Q. I want to backtrack a minute here.

A. Yes.

Q. I believe it was stipulated here a moment ago that the Odell telephone number 4235 was that of your sister, Ethel; is that correct.

A. That is right.

Q. And what is the Odell number 4384?

A. That is my telephone number.

Q. Do you recall receiving a telephone call from Mr. Stegmann long distance on or about August 6, 1951?

A. I don't want to answer that question entirely. There was so many of them that they are hard to set up. He called many times. [729]

Q. Well, the telephone records of the West Coast Telephone Company that have been received in evidence here show that on August 6 a phone call was placed from the telephone number of Mr. Stegmann in McMinnville to Odell 4984—4384, rather.

(Testimony of Paul Winans.)

A. As I said, there were many, but the best that I could do in attempting to reconstruct that, it was probably him asking if we had——

Mr. Lindsay: Excuse me, that record shows Odell 4235.

Mr. Buell: Am I mistaken on that?

Mr. Lindsay: Is that the one at 7:50 a.m.?

Mr. Buell: Yes—no, I have the wrong slips. May I have the others, please?

(Discussion off the record.)

Mr. Buell: I am sorry, that was a phone call to 4235, your sister's phone.

A. I believe I can explain that. My telephone had not yet been installed at that time, I believe.

Q. (By Mr. Buell): To possibly refresh your recollection a little further, the time of the call was 7:50 o'clock in the morning, and the call lasted three minutes, and this was on August 6.

A. Pretty hard to do anything with that. As I said, there were numerous calls, but my best effort to give you something on that would be it was probably a call from him inquiring [730] whether or not I had made, submitted this proposition to Linville. Now, that is just theory. I don't know, but it is logical.

Q. This August 6 would be a day or two after the meeting which you had with Linville and Monchallen?

A. August 6 would be three days later.

Q. Do you believe that you told Mr. Stegmann

(Testimony of Paul Winans.)

on that occasion the result of your meeting with Monchallen referring to the offer that you had made to Monchallen?

A. If that were the purpose of the call, I would have told him. It is a little difficult there.

Q. That is a little speculative, I think. Go ahead with what happened on the meeting of August 10th of the evening that you have just referred to.

A. Well, in the afternoon of August 10th, by that time much more than the week that he was to appear in person had passed, and we had a firm offer with people that we knew were thoroughly reliable, of \$80,000, and it was the feeling of the family that we should not lose that offer, and I didn't want to let it run along much further. I had waited at least three days past the week period so I went into Hood River and told Mr. Linville to get hold of Mr. Monchallen and we would close it in at \$80,000.

Q. Going back to the meeting you had with Stegmann on the 1st or 2nd of August, when he left there did you tell him [731] that you wanted some kind of a definite answer within any specified time?

A. That I did?

Q. Yes, as to whether or not he would confirm?

A. I think I set a one week limit. I know that I did.

Q. Well then, this meeting on the evening of the 10th, as I recall your deposition, you stated Mr. Stegmann arrived while you were, your family was eating dinner?

A. That is correct.

(Testimony of Paul Winans.)

Q. Following the dinner did you arrive at an agreement on the hundred thousand dollars?

A. That was discussed while I was completing my dinner.

Q. He said at that time, did he, that he would go for the full hundred thousand dollars?

A. He did. He asked me, he asked me if we had reached a conclusion. I told him we had.

Q. Then did you tell him that you would give him an option on it for that price?

A. I did. He first asked me before we went any further how about the back 40 and in the event that the further stipulation as to the conditions he was going to get it in but we had decided that we would.

Q. Then that was the reason for not preparing and signing the option the night of the 10th?

A. I was not in that big a hurry. I had just gotten home, [732] getting pretty late, and it was agreed that he would come back the next morning, and we would—we would execute an option.

Q. Had you prepared any draft of a proposed option at that time?

A. Yes, I did. I went to work on it.

Q. I mean, had you prepared one by the time Stegmann arrived at your place on the evening of the 10th?

A. That is a little—the evening of the 10th, no.

Q. Following Mr. Stegmann's departure that evening of the 10th what did you do with regard to preparing an option?

A. I am not quite sure that I did anything on it

(Testimony of Paul Winans.)

that evening. I might have. I probably began to think it out.

Q. What time did Stegmann come back on the 11th?

A. I kept no notes or records, but I would say reasonably early. By that I would mean maybe eight or nine o'clock.

Q. Did you have the option all ready at the time he arrived?

A. That is a little obscure. I rather think I did though because I recall that this rough draft that I did have made up was written on some of the children's school pad paper.

The Court: Will you step down please.

(Thereupon, a short recess was taken.)

PAUL WINANS

recalled, testified as follows:

By Mr. Buell:

Q. I believe just before we closed, Mr. [733] Winans, you mentioned that you had prepared a rough draft of an option on scratch paper?

A. Yes.

Q. Was that ready for Mr. Stegmann to take a look when he arrived?

A. I may have still been working on it. I do know that he arrived, and I proceeded to set it up on the typewriter, and there was a good deal of talk while I was doing this, interruptions. I made maybe some errors, and then finished the copy of the option in duplicate.

(Testimony of Paul Winans.)

Q. Mr. Winans: I will ask the Clerk to hand you Defendant's Exhibit No. 304 and ask if you can identify that as a rough draft of the option that you had prepared? A. Yes, it is.

Q. Now, that rough draft provides that the payments had to be made, a little as soon as the final draft that was signed by you and Stegmann, doesn't it? A. Yes.

Q. And what were the dates of payment provided for under that rough draft?

A. It says, "A thousand dollars, the receipt of which is hereby acknowledged," at the given date and, pardon me just a moment—

The Court: I think the instrument speaks for itself, doesn't it? [734]

Mr. Buell: All right, we will offer it in evidence.

The Witness: I was just a little slow in picking up the next payment there. I wanted to be sure of myself before I made a statement.

The Court: Any objection to the receipt of the rough draft?

Mr. Jaureguy: I would like to see it again.

Mr. Ryan: I would, too. I don't remember seeing it.

The Witness: I don't believe—oh, yes, here at the bottom we have \$4,000.

Mr. Jaureguy: In so far as the defendant Parkers are concerned, we object to it as not binding on them. We do not say it might not be admissible against others.

Mr. Ryan: Your Honor, I do not object to this

(Testimony of Paul Winans.)

as far as for the purpose of his testimony, but the instrument itself is self-serving.

The Court: Of course, he could testify to it orally. It is merely background information. It may be admitted.

(Document previously marked Defendant's Exhibit 304 for identification was thereupon received in evidence.)

Q. (By Mr. Buell): Was there any discussion or argument between yourself and Mr. Stegmann concerning the proposed terms contained in this rough draft?

A. Yes, he objected to the 3-day option provision. [735]

Q. On any particular grounds?

A. He wanted more time on that. As a matter of fact, it had been my intention to require that he pay \$5,000 down for this option. I decided to be a little easy on him and let him have three days to make the balance of the option money.

Q. Did he say why he wanted more time?

A. He said that was pretty short time, and I don't remember that he gave any specific reason. It might be in order to say that there was some further consideration was not written into the option at all in arriving at the decision to let him have the property.

Q. After the option was signed, were any arrangements made between you and Stegmann as to when you would get started surveying out this reserved area?

(Testimony of Paul Winans.)

A. That is set out in the option as an even date of the exercise of the option.

Q. What I mean, did you not make any appointment with Mr. Stegmann as to when he would get started working out this reserved area?

A. I would say to that "yes" for the reason that we had just one week to do it in so there had to be an understanding, and I was—yes, definitely, I was to get surveyors to do the work of setting out the reservation.

Q. All right then, following the 11th when was the next time [736] you either heard from or saw Mr. Stegmann?

A. August 11th?

Q. Yes. A. August 18th.

Q. Had anything been done by that time relative to the survey?

A. Yes, I had taken up the matter of employing surveyors and got no one in Hood River, had to telephone into Portland and get some men out of Portland.

Q. Do you recall receiving any telephone call from Mr. Stegmann on August 17th?

A. No, I can't specifically recall. It was before—there were many telephone calls coming in from Mr. Stegmann, none going out from ourselves to him.

Q. The telephone records show a long distance phone call from Mr. Stegmann's McMinnville number to Odell 4235 at 7:00 o'clock in the morning on the 17th.

A. Yes.

Q. Do you remember that telephone call at all?

(Testimony of Paul Winans.)

A. No, not specifically.

Q. You made arrangements for Mr. Haynes to come up to Hood River on the 18th; did you not?

A. The arrangement was made with Mr. Bogar, but Mr. Haynes came with him.

Q. The two of them came on the 18th? [737]

A. That is right.

Q. Mr. Stegmann early of the morning of the 18th, also?

A. At a reasonable time, I believe.

Q. And Bogar, Haynes, and Stegmann and yourself and your brother went on up to the Lost Lake property and started to survey?

A. Bogar, Haynes, my brother, myself, Stegmann, Ray Andrews and his brother, Carl Stegmann.

Q. Referring to the Notice of Election to Purchase which has already been received in evidence here, was that signed and the second \$4,000 payment—rather, the second payment of \$4,000 made before you went up to the survey, or after?

A. No, afterwards for the reason that the provision was that we must set out this reserved area.

Q. How far along did you get on the reserved area on the 18th?

A. Not very far. We run the north line of Lot 1 from the meander corner to the quarter-corner between Sections 9 and 16. We turned south on the west line of which would be the west line of Lot 1 and failed to get as far as reaching what they call Inlet Creek.

Q. Following the completion of the day's work

(Testimony of Paul Winans.)

in surveying, you came on down to your place near Dee, didn't you? A. That is right.

Q. And there you paid off the surveyor's for their day's work? [738] A. Yes.

Q. Did Stegmann stop at your place?

A. At the service station.

Q. At the service station, and he—was the Notice of Election to Purchase prepared at that time or——

A. It was.

Q. Had you shown it to Mr. Stegmann before you had gone up to the survey in the morning?

A. No, I quite distinctly remember that I prepared that paper in its entirety in his presence after returning from Lost Lake.

Q. How many copies did you prepare?

A. At least two.

Q. Then Mr. Stegmann paid you with a \$4,000 check on the First National Bank of McMinnville; is that correct? A. Yes, that is right.

Q. And the Notice of Election to Purchase was signed at that same time, was it?

A. That is right.

Q. Now, the copy of the Notice of Election to Purchase which you retained was signed by Stegmann; was it not? A. That is right.

Q. And also the acknowledgment of the receipt of the Notice and the extension of time for the survey which at the bottom of the instrument was also signed by you and Stegmann and your [739] sister, Ethel? A. Yes.

Q. Was Carl Stegmann there with you at the

(Testimony of Paul Winans.)

time that the Notice of Election to Purchase was prepared and signed?

A. I think he was outside at the service station, but he was—he had not gone away.

Q. It is your recollection that he was not in the service station at the time the check was made out and delivered and the notice signed?

A. I know that he was not in there all the time, and I couldn't say specifically that he was not in there when this check was made out.

Q. All right then, following—or were there any arrangements made as to when you would next meet with Stegmann to continue the survey?

A. Yes, in this acknowledgment of the election I believe that I set that up for an extension to August 26, 1951, one week.

Q. Was an appointment made as to when you would meet and continue the survey?

A. Yes, it was arranged with the surveyors that they would return the next Saturday, or, rather, Friday evening I think they actually arrived.

Q. About what time did Mr. Stegmann leave?

A. A little hard to determine, let me look up a little bit.

Q. That is immaterial. In any event, he and his brother left? [740] A. Yes.

Q. Did they return that night? A. No.

Q. Had you received any telephone calls prior to August 18th from any man or identifying himself over the phone as a Mr. Chet Parker?

(Testimony of Paul Winans.)

A. Definitely no.

Q. Did Mr. Parker, who is sitting here behind Mr. Jaureguy, did he appear at any time during the course of your meeting with Stegmann there in the service station on Lost Lake, on the evening of August 13th? A. He did not.

Q. Or the 18th? A. He did not.

The Court: On the whole day of August 18th. How about at any time August 18th?

The Witness: Not at any time, your Honor.

Q. (By Mr. Buell): Did you hear from Stegmann at any time before the following Saturday, August 25th, that you can specifically recall?

A. I cannot specifically recall. It is logical that I probably did not.

Q. Did you see or receive any telephone calls from Mr. Chet Parker? A. None. [741]

Q. At any time before August 25th?

A. None. None at all.

Q. All right, you already mentioned that the surveyors returned in the evening of August 24th. Did Mr. Stegmann arrive for the survey party the 25th? A. Yes.

Q. All right, tell what occurred in the course of that survey party?

A. We continued to survey around the west and south boundaries of Lot 1. I believe that we didn't complete it altogether the 25th. I think we were—we were spending some time trying to determine just exactly where the south line of the property should be, but around the lunch hour we had com-

(Testimony of Paul Winans.)

pleted that and moved over after lunch to set out the boundaries of the reserved 8.88 acres.

Q. Was that on Saturday or Sunday that you got started on the reserved area? A. Sunday.

Q. Did Stegmann arrive alone on Saturday, the 25th? A. Yes.

Q. Did you have any arguments or disputes between the two of you about the reserved area on Saturday? I am referring to Saturday.

A. Saturday, no, it was not mentioned, I believe, on Saturday or any more, but it was generally understood what [742] we were driving at.

Q. In other words, things went along smoothly but slowly on Saturday? A. That is right.

Q. All right then, on Sunday were the surveyors also present at the survey party? A. Yes.

Q. And Mr. Stegmann alone? A. Yes.

Q. Did any dispute develop on that day about the reserved area?

A. Well, it is a little bit hard to call it a dispute, but when we set out this reserved area I could get no agreement with him as to what we were going to do. He objected that this would not be quite right and fair to him, and that sort of thing. I would not call it a dispute.

Q. Well now, you had contemplated, had you not, that the line dividing the north and south half of Lot 1 would follow along the creek somewhat generally; did you not?

A. Dividing, you mean, as to the reserved area? Pardon me.

(Testimony of Paul Winans.)

Q. Never mind. I will ask a different question.

Did you not intend or contemplate reserving a small tract of approximately one acre at the very north end of Lot 1? [743]

A. That was definitely understood orally when the option was drawn. I didn't go to the trouble to write it in.

Q. Did any argument arise on the 26th about that? A. No.

Q. Well then, what was the trouble that was reached, or what was the trouble between you?

A. So far as I was concerned, there was not any trouble but I could not submit a proposition that Stegmann would agree on. He would not make any of his own that he would go on. He was sullen, stubborn.

Q. Then did you reach or enter into any agreement for other extension of time? A. Yes.

Q. When was that agreed upon?

A. When it was clear with him that we were not getting anywhere that evening I wrote out in pencil a note or agreement for the extension, I believe it is until September 10th, 1951. That was signed by Stegmann and myself.

Q. Now, which of the two of you was it that wanted to hurry up the matter of getting the reserved area staked out? Were you the one that was in a hurry or was Stegmann in a hurry to get it done?

A. Well, for my part, it was part of the deal and had to be done. I wanted to get it done and over

(Testimony of Paul Winans.)

with. For Stegmann's part, he didn't indicate any special hurry at that period. [744]

Q. Now, by the time you and Stegmann parted on Sunday, August 26th, had you at any time heard of Chet Parker's name. Had you heard his name mentioned by Stegmann or anybody else by the time you and Stegmann parted on August 26th, Sunday?

A. No, not by word of mouth.

Q. Had you seen him? A. Never.

Q. Had Stegmann by that time mentioned that anybody besides himself had an interest in the property?

A. No, the title was entirely with Walt Stegmann.

Q. In addition to the agreement of the extension of time to September 10th, were any other plans made between you and Stegmann as to what was going to be done next about working out this description?

A. Well, on the way out after we broke up I called it off a little early for the reason that the surveyors were there on pay, and we were not getting anywhere, so I suppose it was, I think, around 4:00 o'clock, and all the way out walking out on the trail Stegmann sort of advanced the proposition in his usual cagy manner to the effect that whereas these surveyors are getting along so slow would it be all right—he says, “I have a friend who has done some surveying. Would it be all right if I brought him up to finish it?”

(Testimony of Paul Winans.)

Q. Did he mention the friend by name? [745]

A. No.

Q. Did you tell him that that would be all right if he wanted to bring somebody else along?

A. I did with a reservation, I said I didn't like the idea, but I said I guessed that that would be all right provided that his friend's work was satisfactory.

Q. Did he say when he would bring this friend up? A. No.

Q. Or was that left hanging? A. No.

Q. All right then, nothing else developed during the course of that day, did there, that developed into this purchase?

A. No, I think not. We got back and paid off the surveyors, and I think that closed the day.

Q. What was the next step in which Stegmann or the Parkers appeared on the scene?

A. Well, it was confused right there. I am not quite sure as to the dates. I made no record or no notes on the matter, didn't imagine there was going to be any issues come up so I wasn't particularly concerned. So it may be—this was Sunday—pardon me, wait a minute, are we getting ahead of ourselves?

Q. No, it was Sunday, the 26th?

A. That's right, Sunday, the 26th. According to my best [746] records, it was Monday morning, August 27th, that Stegmann came back.

Q. Was there somebody with him?

A. Yes, there was a man and a boy. He introduced the man as Mr. Chet Parker, the engineer,

(Testimony of Paul Winans.)

the surveyor. Now, pardon me, he didn't say engineer. He said his friend, the surveyor.

Q. Where were you at that time?

A. At the service station.

Q. They came into the service station, the three of them? A. They did.

Q. All three?

A. I think the boy remained in the car.

Q. What were you doing at the time?

A. I was endeavoring to work up an enlargement off of a Metsker map with the idea of setting out a plan of the reserved area that would comply with our understanding and be satisfactory to Stegmann and myself and the family, our family.

Q. Was that the first occasion that you had had to ever see Chet Parker or meet him? Was that the first occasion that you had ever had to see or meet Chet Parker? A. That is the first time.

Q. Was anything said about his being a prospective purchaser of the property or the assignee of Mr. Stegmann's option? [747]

A. Definitely not.

Q. What did he say when he came in; what did he say?

A. Stegmann brought him in and represented him as the surveyor, and I was working on this map on the table, and I, of course, proceeded to explain what I was doing and what I thought would be a fair and just way out of the reserved area. Mr. Parker looked at it carefully, I would say, examined it with rather a professional, the interest of a pro-

(Testimony of Paul Winans.)

fessional man, made no comment, as I remember, but he seemed to understand what I was trying to do better than I did.

Q. What did Stegmann have to say besides introducing Parker?

A. I cannot recall any outstanding conversation right there any more than after looking this over for a little while I presumed that the, we were going up to the Lake to complete the survey. I said, "Well, let's get going and get up there," and Stegmann immediately vehemently said, "No, no," he said, "We can do it ourselves," he said, "Mr. Parker with my assistance and the boy's assistance can do all that is necessary to be done."

Q. Did you let them go on up alone then?

A. I didn't like the idea very much, but, after all, I had not made any final commitments so I said, "Okay." I had plenty to do anyway.

Q. They went on up, in any event, they left the station that [748] morning? A. Yes.

Q. Did you see them again that day?

A. No.

Q. Do you know yourself whether they went up to the lake?

A. I couldn't say that they left in the direction of the lake.

Q. All right, when is the next time that you saw either Stegmann or Parker?

A. The contact from Stegmann came quite immediately. I have no exact dates there, but I would say the 28th or 29th Stegmann came back with a

(Testimony of Paul Winans.)

professionally drawn map showing a layout of the property, and I think it was confined to Lot 1.

Q. He came back alone? A. Yes.

Q. Did he leave that map with you?

A. Yes.

Q. Do you still—is that the map, Mr. Lindsay, that you had identified?

Mr. Lindsay: Yes.

Mr. Buell: If you could find it for me, I will go ahead with a few other questions.

Mr. Lindsay: It is 303. It is right here.

(Exhibit presented to witness.)

Q. (By Mr. Buell): You gave the map to Mr. Lindsay; did you not? [749] A. I did.

Q. He has just handed it to us here.

A. Well, let me look at it. I am sure that is right. Yes, I can identify that as the map that Walter Stegmann brought back around August 28th or 29th.

Mr. Buell: All right, we will offer that Exhibit 303 in evidence.

The Court: Any objection?

Mr. Jaureguy: I think it is all right. I would like to take a look at it though.

Q. (By Mr. Buell): What other discussion followed between you and Stegmann the morning that he brought that map up?

A. Well, on that map he showed me that, as it shows there, that he wanted to take in or exactly

(Testimony of Paul Winans.)

approved—that would be better—from the reserved area all of the land in the northeast corner of the property where it was understood, I presume you would say a gentleman's agreement, that the family was to retain up to at least one acre. They said they would have to have that and the land running southwesterly, I can't exactly designate the point, but I think, yes, I think that went 600 feet along the shoreline of the lake, and then I think he indicated that that would turn off and run southerly through a swampy area which would be a reserved area for ourselves.

Q. Did an argument or dispute develop about their failure to [750] include——

A. It came near to being a dispute than anything that occurred during the entire discussion. It definitely violated the understanding we had about the reservation of ground in the northeast portion of the property.

Q. Well, what happened?

A. Well, I took it as an ultimatum. He said he would have to have it that way or we keep, I keep all of Lot 1, 25 acres, and he would take Lot 2 and take 40 only.

Q. Was any definite conclusion or agreement reached?

A. I told him we would not do it, to begin with.

Q. That you would not keep Lot 1 and give him the 40 acres?

A. I didn't like the idea at all. I told him—well, there was a little discussion. I felt him out a little bit there, just exploring only as to what is in the man's mind. He said it would have to be that way

(Testimony of Paul Winans.)

or else, in substance, and we would keep Lot 1, and he would take the back 40. And I said, "At what price?" He said, "\$40,000." And I was simply just exploring, no commitments, and I said it ought to be 50,000 anyway without any idea of closing. I was just exploring, and we stopped there. Then I said, "What do you want, your money back?" I meant the whole deal. He refused any answer. Then he said something to the effect that he would have to have the back 40 anyway, he said, because somebody in there could go in—I am not quite sure, [751] can't quite place it—that if he bought only the front 40 that somebody might come and get possession of Lot 2, the back 40, log it off, and it would ruin his holding so it would have to be included on any kind of a deal. I did not like the idea at all. I told him, I said, "Well, I don't like that. Supposing that we accept your proposition, sell you only this back 40, and you know how bad the title is, and if you never got anything I just wouldn't feel right about making that kind of a deal." Then I was reconsidering, and I conceded. The family and I had thoroughly discussed it, and it had been decided as a fact, which I was not telling Stegmann at that moment, that the family had decided that at that price we could let the whole thing go without any reservation rather than losing the deal.

Q. You told him that you would go ahead and accept the reserved description that is presented in the map that has been presented in evidence?

A. That is right.

(Testimony of Paul Winans.)

Q. What was to be done next? Did you make an appointment to meet him, or what?

A. Well, he said that he and his engineer, Mr. Parker, had been up there and run and traversed the water line, the shoreline to clear across the 40, which if I believe shows on this map—if it doesn't it shows on that they will present later—and [752] that we made an agreement to lay out the reserved area according to that. He would bring Mr. Parker back, and they would set the iron stakes, mark the various corners and angles and so forth.

Q. That appointment was made for August 31, was it?

A. I won't say definitely there was an appointment made, but they were back. I set it as August 30th with a margin or leeway of a day or two one way or the other.

Q. Did they arrive and you start up on the survey party? A. Yes.

Q. There was Mr. Parker and Stegmann and yourself and your brother Ross, Parker's boy Myron?

A. Yes; I didn't know him by name. It is the son.

Q. Now, what was said between you and Mr. Parker during the whole course of the time you were together on that day, whether it was August 30th or 31st, when you were up on the survey party?

A. Well, Stegmann was driving his car, and my brother Ross rode in the front seat with him, and Mr. Parker and I and the son rode in the back

(Testimony of Paul Winans.)

seat, and there was continuous conversation over matters, as I remember it, wholly unrelated to this transaction or the survey on the way up to Lost Lake.

Q. Tell us just all of the conversation that occurred between you and Parker relative to the Lost Lake property on that day?

A. I think, I can't say that there was any specific [753] conversation until we got out onto the job, and Mr. Parker was handling the compass, and I think my brother Ross driving the iron stakes, and Mr. Parker had this instrument which, I believe, is a staff compass, and was taking the bearings and directing the distances or, rather, some of the others were handling the—it was not a log chain; it was perhaps a 100-foot tape. He was giving the bearings, and the others were taking distances to the bearing trees that he directed to be marked, and he was taking the notes of the bearings and——

Q. What were the conversations between you and Mr. Parker about the property, if there were any?

A. That did not come up for quite some time until after we were on the job, and it was started by Mr. Stegmann. He brought it up in this way, sort of an offhand remark or statement. He said, "Well, you have title insurance on this property, don't you, Paul?" I said, "We do, effective on Lot 1 only." I told him that on the title insurance ad-

(Testimony of Paul Winans.)

justment, as I had previously told him many times, it had been written off and that it was effective only on Lot 1, and I think I told him the amount of \$2,000.

Q. All right. Now, just let me interrupt for a moment. While this conversation was going on were you and Parker and Stegmann all standing together?

A. Generally so throughout the day's work. There was some break-up. [754]

Q. No, I am referring to this conversation you are just speaking about when Stegmann said that you have a title insurance policy on this.

A. Definitely so, we had to be together.

Q. That is what I am asking. A. Right.

Q. Now, whereabouts on the property were you?

A. Well, we were on this reserved area line because we did it while we were at work on it. Just the exact point I can't tell you now.

Q. Go ahead with what the conversation was about the property.

A. Well, what it led into was just simply going over all that I had told Stegmann before generally around and including this discussion or explanation of the whole title picture which included the fact that we had had a title insurance adjustment, and I think I went further than that and set up the grounds, as I understood them, for the Government's claim to the property.

Q. You mean the fact that the Government's

(Testimony of Paul Winans.)

survey had never been completed as to the 40-acre tract?

A. Well, further, I knew that I quoted the Supreme Court decision bearing on similar cases.

Q. All right. Did you advise—in the course of that conversation was the fact mentioned that you had written to Attorney Sever, Frank Sever, to attempt to get a private bill through [755] Congress?

A. Definitely, I am sure of that.

Q. You told them at that time, did you, that you had paid all the taxes on the property?

A. I did.

Q. For years and years?

The Court: Where was Mr. Parker standing with reference to where you and Mr. Stegmann were standing?

The Witness: It is a little difficult to say to that, but within very close earshot.

The Court: Did Mr. Parker participate in any of the conversation?

The Witness: Immediately following Stegmann's opening conversation Parker took over, and from there on the whole conversation practically was between myself and Mr. Parker.

The Court: So you were telling Mr. Parker about a defect in the title and explaining what had been done, and Mr. Parker was answering you?

The Witness: I think he sort of led me on. He was very interested.

The Court: Go ahead.

(Testimony of Paul Winans.)

Q. (By Mr. Strayer): Was the purchase of the property by Mr. Stegmann from you discussed between you and Mr. Parker in the course of that conversation?

A. I would say definitely yes. [756]

Q. Was there some conversation about possible tax advantages that you might be able to make if you were to handle the purchase a little differently?

A. Yes, there had been. In the first place, Stegmann I think perhaps upon the second contact we had asked me if I wanted it all in cash and suggested that sometimes people would like to have it split between the two years so that not to have such a heavy tax load, and this was resumed a little later. It was following the title discussion.

Q. Did Mr. Parker discuss this tax question with you? A. He certainly did. He led it.

Q. Did he make any recommendation to you?

A. He did.

Q. What was the recommendation that he made?

A. Well, first, I never had had experience in rendering income tax returns more than our logging operation and personal returns, and he led me into rather deep water that I didn't understand, but I remember that he particularly advanced some plan where the taxes were charged off very materially by, I think, some kind of a capital gain system, but I won't attempt to explain it now. I have explored it a little bit since Mr. Parker talked with me about it, and I am rusty on it at this moment. Then he also strongly advanced the proposition

(Testimony of Paul Winans.)

that we could set up an expense account running over the whole period we had owned the property. He said, "I see where [757] you have done this and that there. You have built trails, have built fire guards, and so on; you have guarded the property, come up here to look after it over all these years, and so on." I was not getting it all as fast as it was being set out, and I finally made the objection, I said, "Yes, but that would be a fictitious proposition." Mr. Parker replied, "Who would there be to say it was fictitious?"

Q. Was there any other discussion about the property other than your giving Mr. Parker a little history of your ownership and the claim of the Government and this tax question?

A. Well, it simply got into——

Q. Now, just a moment. I am referring to any further discussion between you and Mr. Parker.

A. No; and may I have the question about what?

Q. About anything other than the tax matters that you have just mentioned and your giving him a history of the title and your family's ownership of the land?

A. With regard to the transaction?

Q. Yes, with regard——

A. Let's see, the title status, the insurance loss, the tax matters, I don't think anything very material. I know that he brought up and talked considerably about the Fish Commission's dam flooding

(Testimony of Paul Winans.)

part of the property, which is true, and he said that we ought to go down and dynamite it.

The Court: Go down and do what? [758]

The Witness: Dynamite it, your Honor.

Q. (By Mr. Buell): Did you complete the survey of the line of the reserved area on that day?

A. Yes.

Q. Did Mr. Parker stop at your place on the way down, or did he drive right on through?

A. I think that he stopped, got into his own car, and then went away in the direction of Hood River.

Q. Was anything said by Mr. Parker or Mr. Stegmann that day about Mr. Parker being the purchaser of the property and having acquired Mr. Stegmann's option?

A. No, any more than perhaps certain veiled suggestions that Mr. Stegmann had previously advanced about a friend that he might have to let in on the property.

Q. Then when was the next time that you saw Parker?

A. Oh, I think quite immediately following Labor Day. Let's see now; this is two contracts with Parker. Let us keep that straight. There were only three, so the next and only time I saw him in Hood River was, I think, immediately following Labor Day, when he came to see me. He brought a man to see me by the name of Wardell.

Q. Did you have any discussion with Mr. Parker

(Testimony of Paul Winans.)

on this day he arrived with Mr. Wardell about a purchase of the Lost Lake property?

A. No. [759]

Q. It was solely confined to this housing project?

A. That is right.

Q. Just to keep the record straight, that housing project as it has been referred here consisted of two partially-built houses? A. That is right

Q. On some property that you owned not too far from your home, is that right?

A. That is right.

Q. About how long did you see Mr. Parker that day?

A. They were in a terrific hurry, and I would imagine their stay was in a period of one and a half, certainly not to exceed two hours.

Q. Then on Saturday, September 8th, was about the next day that you took any steps with regard to completing this purchase, was it not?

A. Well, there had been a Stegmann call in there in between.

Q. Telephone call? A. No, personal.

Q. With regard to what?

A. Well, he came to press me to get the mortgage that was outstanding on the balance on the property cleared up and the deal closed. He said he had to go away, I think, down to a 22,000-acre stock ranch that he was interested in, in Northern California. [760]

Q. During the course of time before September 8th, why, you got the mortgages cleared up, didn't you? A. Faster than I thought that I could.

(Testimony of Paul Winans.)

Q. And you and Stegmann and Mr. Haynes, the surveyor, met on Saturday, the 8th, to work out the legal description for the reserved acreage?

A. Yes, there had been a telephone call from Stegmann—I distinctly remember that—asking about where I was getting on this mortgage cleared up. I told him it was being settled and possibly we would be able to close it Saturday, September 8th.

Q. All right. Saturday, as I understand it, you met for a while in Vawter Parker's office, and you were also over in the office of the City Engineer in Hood River, working out this description, and had a little trouble arriving at an exact description; correct?

A. Yes, the arrangement had been made to meet Mr. Stegmann in the west end of town and Mr. Haynes at the—or near the City Engineer's office.

Q. Would you tell us what occurred in the course of the discussions which were held in Vawter Parker's office in the presence of Vawter Parker on that day? What was said about the purchase of the property?

A. Well, after getting an agreement on this, I think, computation of the area according to this, the other map—not this [761] map, another map, I think, a little more elaborate—set up so that we were satisfied within reason that we were retaining 8.88 acres, we proceeded then to Vawter Parker's office and proceeded to give Mr. Parker the figures so that the reservation could be described and the deed made.

(Testimony of Paul Winans.)

Q. Was any kind of a draft of the deed prepared on the 8th? A. Yes.

Q. Was Mr. Stegmann given a copy to take away from Vawter Parker's office on the 8th, that you recall? A. Yes.

Q. Was there any discussion as to how payment for the property was to be made?

A. Oh, yes; when we were leaving the lake on that survey Stegmann had submitted to me if I would be willing to take his personal check for the \$95,000 balance remaining. I indicated at that time that the others had gone through, and perhaps it would be all right; however, I got to thinking it over, and I told Vawter Parker when it come to that to tell Stegmann it would have to be a certified check, and Mr. Vawter Parker fully agreed with me, and after the deed, I believe, was prepared and I believe it was presumed to be fully satisfactory that evening of September 8th, when it came to the stipulation that we would have a cashier's check, Stegmann didn't like it very well. However, he said he would have to get—he couldn't get into the bank at Mc-Minnville until Monday [762] to get a certified check. He would be back sometime Monday with it.

Q. Was anything said on the 8th about getting Mr. Stegmann to sign an agreement acknowledging that he was receiving the title to the Lot 2 or the back 40 subject to the claim of the Government, or did that occur on Monday?

A. It is a little hard to say definitely, but it probably was the 8th because the thing was shaping

(Testimony of Paul Winans.)

up to final conclusion on the deal, and it was my purpose to submit that before there was any deed signed.

Q. Was there any discussion on the 8th there about taking the description down to the title company to have it checked at their office?

A. I believe that was the 8th, but it certainly definitely occurred.

Q. Well, what occurred?

A. Mr. Vawter Parker suggested that they take—there was a lot of, oh, failing to get together about, on the description, and Mr. Miller down there is mighty good on descriptions, and Vawter Parker wanted to take it down to get Mr. Miller in on it, I am sure.

Q. Did Mr. Stegmann have anything to say about that?

A. Well, to use a woods expression, he bucked on that. He just wasn't going to have it.

Q. Did he express any reason?

A. No sound reason. He said something that they didn't know [763] anything about it down there, ought to be the County Engineer, to get the County Engineer.

Q. Referring back to that little agreement that you wanted Mr. Stegmann to sign about taking title subject to the claim of the Government, what did he say about that?

A. I submitted it to him for his signature, and he sat and studied it for quite a while and said, "No,

(Testimony of Paul Winans.)

I don't think I could go for that"; he said, "that would be the same as my admitting that I know the title to that 40 acres is no good."

Q. Now, on that particular question about the title not being any good, did you when you had given the history of the title to the property to Mr. Parker when you were up on the survey trip, did you mention to Mr. Parker that the Pacific Abstract & Title Company had suggested that you had committed some kind of a fraud on them in getting your policy of insurance?

A. Yes, I think after he had gone all the way around on this and discussed all those angles I think I made the statement that the title insurance company seemed to be hurt about it and felt that maybe I had swindled them on it, and Mr. Parker instantly came back vehemently and said, "I do not agree." He said, "The fact of your occupying this ground, paying taxes on it for all these years, there could be no better notice to the public than that of your ownership."

Q. Then were any of the drafts of the deed that were prepared [764] on Saturday, the 8th, did any of them contain the name of the grantee in them?

A. Yes, I saw one, I know, that——

Mr. Jaureguy: I object to that as not the best evidence. I mean, so far as Parker is concerned, the objection is made on behalf of Parker.

The Court: Do you have the deed?

Mr. Jaureguy: No, I do not have the deed.

(Testimony of Paul Winans.)

The Court: I mean Mr. Buell. Do you have a copy of that deed about which he is talking?

Mr. Buell: I do not. Do you have it, Mr. Lindsay?

Mr. Lindsay: It is not here.

Mr. Ryan: Not having a copy of the deed, I object on the same basis for Mr. Stegmann.

Mr. Buell: I think probably we would be obliged to either tie this in by showing that it is no longer in existence—but I think that the witness is entitled to answer.

In other words, if it has been destroyed, why, then, we would have the secondary evidence. Otherwise, the draft would have to be produced.

Mr. Jaureguy: That is the same point I was making, that either they have got to show it is not available and why, or they have got to produce it.

The Court: Who prepared the deed?

Mr. Buell: It is my understanding that Vawter Parker [765] did, and also it is unavailable.

Mr. Jaureguy: Well, I object to that, as far as the Parkers are concerned, that it is not in any way binding on them regardless of whether they had the original deed here, the same objection I made to one of the other documents produced here.

Mr. Buell: Well, I will pass it.

The Court: I think I understand the theory of the plaintiff's case is that notice to Stegmann is notice to Parker because they are attempting to prove agency.

(Testimony of Paul Winans.)

Mr. Jaureguy: Yes, I understand that that is their theory.

Mr. Ryan: It has not yet come out here that this purported deed has been shown to Stegmann either.

Mr. Buell: We can pass that and take it up with Attorney Parker when we check with him a little further.

Q. What was the final state of the transaction when you broke up on Saturday, the 8th?

A. Well, I guess I would say that Mr. Stegmann was not very well pleased. He had been urging and pressing that he had to get away to go to a stock show in Salem that he said was more important even than closing this Lost Lake transaction and was pushing us on it for that reason, and he left in somewhat of a huff, I think, with the understanding that we would resume again the following Monday as soon as he returned, as he could get a cashier's check at McMinnville and return. [766]

Q. Had you at any time up to the time they broke up on Saturday, the 8th, heard from anyone that Mr. Chet Parker had or claimed any interest as one of the purchasers of the property?

A. Definitely not.

Q. Did you hear from either Mr. Parker or Stegmann on Sunday, the 9th?

A. I heard from Stegmann, a telephone call.

Q. What did he say?

A. That he had been able to get into the bank at McMinnville and had a \$95,000 cashier's check

(Testimony of Paul Winans.)

and would be on hand first thing Monday morning, that would be the 10th, to complete the transaction.

Q. All right. You met him Monday morning, then? A. Right.

Q. What time?

A. Oh, I cannot fix that exactly. I imagine around 9:00 o'clock, perhaps earlier.

Q. Was Mr. Haynes up there on that day, on Monday, also?

A. No, Haynes had gone back to Portland on Saturday, the 8th.

Q. What did you do all day Monday?

A. Well, it was sort of a nightmare getting everything worked out. I should say that Stegmann had a draft of the metes-and-bounds description on the reserved area from the start. It didn't look very original to me, and I objected to it in the [767] first place the morning of the 8th, and I saw I wasn't getting anywhere with Stegmann about it, and I just let it ride, and we got over to Vawter Parker's office, figuring he would pick it up, and he did. He refused to go for that typewritten description that Stegmann had.

Q. Well, now, wait just a minute. Didn't you tell us that a draft of the proposed description had been prepared on Saturday?

A. No, the map had been agreed on, that is, the boundaries as containing the 8.88 acres, but—and then Stegmann produced, I think, a typewritten description beginning "Save and except," and so on, this reserved area, and he seemed to want and set

(Testimony of Paul Winans.)

up and maintained that nothing but that could be used, and that was what the main delay was over. He would not go for any other description.

Q. By what time Monday had you worked out a description then?

A. I think it was worked out and the deed finally completed quite late Monday evening, the 10th.

Q. Were you present in Vawter Parker's office when Mr. Stegmann took a copy of the deed from the office? A. I was.

Q. Did you see Stegmann again before the transaction was closed?

A. Not again in Hood River. He said he would be back in ten [768] minutes when he left.

Q. Had you heard of anything about Chet Parker was to be the grantee of the deed on Monday, the 10th? A. None at all.

Q. At any time? A. No.

Q. Then, as I understand, it was too late to close the sale on the 10th, and arrangements were made to close it on Tuesday morning, is that right?

A. No, not definitely. As Stegmann was pressing to close that evening and I wanted—I made arrangements that as soon as it would be closed—I saw it was going to run after 5:00 o'clock—to get into the bank as soon as the \$95,000 check was available, to deposit it and draw against it to pay him the \$4,750 for the additional ground that had been reserved.

Q. You did that on Monday?

(Testimony of Paul Winans.)

A. Yes, with the understanding it was going to be closed.

Q. My question was: You did not complete the deal on the evening of the 10th. You made arrangements to come back and meet with Attorney Parker on the morning of the 11th, did you not, Tuesday.

A. Well, that was done by a telephone call which I learned was from Attorney Kenneth Abraham's office.

Q. But Attorney Parker directed you to come back Tuesday and wind it up? [769]

A. That is right.

Q. Your sister Ethel had already signed the deed the afternoon before?

A. After Stegmann went out and said he would return in ten minutes, why, my sister signed the deed. Ethel Winans signed the deed.

Q. When you got back to Attorney Parker's office on the morning of the 11th, Mr. Abraham and Attorney Parker were there waiting for you, is that right? A. That is right.

Q. You did not see Mrs. Parker while you were there, did you? A. No, I didn't.

Q. What was said while Mr. Abraham was there?

A. Again, please?

Q. What happened after you got there?

A. Well, the deed, the executed deed was on the table. The \$95,000 cashier's check was on the table, and, if I remember right, Vawter Parker's trust account check for \$4,750 was lying there together with a smaller check, I think, \$105 and some-odd

(Testimony of Paul Winans.)

cents to cover revenue stamps, all there spread on the table, and seeing that Stegman would not sign this paper with regard to the Government claim, I think I have the letter that I proposed to hand him, signed letter, on delivery of the deed. He was not there to give it to, and so I told Abraham to recite the ground and purpose and reason why I wanted—I suggested [770] that once the deed was recorded and the property was out of our hands if they ever expected to get relief through a Congressional act it would be much more difficult to do it in the name of the successor of interest than it would be in the name of the Winans family, and I submitted that possibly it would be better to handle that thing by some kind of a contract for delivery of the deed in order to help Stegmann purchase.

Q. What did Mr. Abraham say to that?

A. He didn't seem to take it very seriously.

Q. What did he say? That is a conclusion.

A. He said, in exact words, as nearly as I can recall, he said, "Paul, from my experience with these people, I don't think they want advice from anybody."

Q. Had you by that time heard of Chet Parker as the purchaser of the property or learned that he was——

A. Not yet.

Q. When was it that you first learned that Chet Parker was the man whose name was inserted as the grantee in the deed?

A. Quite soon. Parker and I sat there discussing the deed which had its rather unusual if not amus-

(Testimony of Paul Winans.)

ing angles, and in a few minutes there was a telephone call which Vawter took down the receiver and had a conversation, and he reached across the desk—I was on the opposite side of the desk—and pulled a copy of the deed that was lying there, a blank copy, [771] over to him, took his pencil, wrote in a name, shoved it back to me with the name Chet L. Parker written in the space for the grantee.

Q. That was the first that you learned of Chet Parker as being the grantee or purchaser of this property? A. That is absolutely true. [772]

* * *

PAUL WINANS

thereupon resumed the stand as a witness in behalf of Plaintiff and Third-Party Plaintiff, and was further examined and testified as follows:

Direct Examination (Continued)

By Mr. Buell:

Q. Mr. Winans, I do not recall whether or not you were asked prior to our last recess in the case whether—or when was the first time that you learned that title insurance had been issued by Title and Trust Company on the property sold to the Parkers?

A. I won't be able to fix the exact date of that, but I do remember the instance very much. I had called at Kenneth Abraham's office on some other matter, and during the course of the conversation

(Testimony of Paul Winans.)

he told me that the title insurance had been issued to Mr. Parker on the Lost Lake property.

Q. Was that after the deed had been placed of record?

A. Yes, I would say probably in the neighborhood of a month after that transaction. I just don't want to try to be exact, and I am quite sure that it was prior to the news story that broke in the Hood River Sun. [777]

Q. At any time during your negotiations with Walter Stegmann, that is, during the entire time period of the negotiations before the option, after the option, up to the time of delivery of the deed, had Mr. Stegmann ever said anything to you about obtaining title insurance on the property that he was supposed to be buying from you?

A. You mean either by myself or by him?

Q. Well, the question was limited to whether or not Mr. Stegmann said anything to you about Mr. Stegmann purchase title insurance.

A. Never.

Q. Did Mr. Stegmann ever mention anything to you about a title insurance report having been issued covering that property during the period of your negotiations with him?

A. He did not at any time.

Q. Now, then, did you ever suggest or mention to Mr. Stegmann that he might be able to obtain a title insurance report or policy?

A. No, I am very sure that I did not.

Q. You already testified that on a number of occasions—or the fact of your prior title insurance

(Testimony of Paul Winans.)

policy with the Pacific Abstract and Title Company had been mentioned to Mr. Stegmann?

A. Will you repeat that? I didn't quite get that question clearly.

Q. I said, you have already testified that during the course [778] of your negotiations the fact of your prior title insurance policy in Ethel Winans' name had been brought to the attention of Mr. Stegmann?

A. Oh, yes; I did tell him that.

Q. Now, can you state whether or not at any time during your negotiations you advised Mr. Stegmann that there had been a change in ownership in the title insurance company in Hood River?

A. I can't recall anything like that. There would have been no occasion for it. I would say I did not.

Q. Mr. Winans, could you tell us when it first was that you yourself learned that there was some question as to the title of either your sister or your father or your mother to that 40-acre tract?

A. The only information I ever had on that up to before this sale was what I learned through my father of a tender of refund of the purchase price to the State on the, that 40 acres, and I could place that date as nearly as I could, I believe around 1907.

Q. Was that offer by the State in the form of a written offer or letter, or what?

A. My impression is that it was. I do not ever remember of personally having seen such an offer, but I do know there was a refund draft tendered.

Q. You base your testimony there upon what your father told [779] you, is that correct?

(Testimony of Paul Winans.)

A. I believe that is correct. I don't recall, I just dimly recall seeing the draft. I think I did. Yes, it would be based entirely on what my father told me.

Q. Did your father at that time mention any specific reason that had been given him for the tender of a refund by the State?

A. I remember that it was based on the presumption that no survey had ever been made of the 40 acres.

Q. That, again, is something that your father told you? A. Pardon?

Q. That, again, is something that your father told you, not something that some representative of the State told you; is that correct?

A. On what my father told me. I think this was by mail entirely.

Q. Then were there ever any steps taken that you know of to perfect the title by your father?

A. Nothing further than, I believe, at the time he firmly stated that it was his—stated, I think, to the State—that it was his property, that he had bought it in good faith, and that he intended to keep it. I remember specifically his standing on his grounds.

Q. Did your father at any time, to your knowledge, prior to the transfer of title to your sister or a deed to your sister, [780] ever make any effort or attempt to sell the 40-acre tract?

A. As an integral part of the property as a whole, I am sure that he did.

(Testimony of Paul Winans.)

Q. When did you first begin to take a hand yourself in attempting to make some disposition of the Lost Lake property relative to both the Lot 1 and the 40-acre tract?

A. I was more or less my father's right-hand man even back when this tender was made, and I worked with him from then on, took an active part in whatever he did with regard to sale or development of the Lost Lake property.

Q. Commencing in 1939 you began negotiations with the Forest Service, did you not, for an exchange of land with the Forest Service?

A. Yes, I noted that the file begins in 1939. I believe there were oral discussions from time to time before that.

Q. Then in the course of your negotiations with the Forest Service in 1949 the fact of the possible defect in title was again brought to your attention, was it not?

A. Pardon me. I understood you to say 1949. That was 1939.

Q. 1939, that is right. That was what I had reference to. Wasn't the fact of a possible defect in the title brought to your attention by the Forest Service in 1939 in connection with your negotiations for an exchange? A. Definitely not.

Q. Did the negotiations with the Forest Service for an [781] exchange continue actively from 1939 on for a period of years?

A. I would say that it remained, well, I would

(Testimony of Paul Winans.)

not say actively through that period either because we rejected their efforts through that period.

Q. Then at the least in 1943 or the latter part of 1943 the negotiations for a possible exchange began again, did they not?

A. I think that Mr. Iler of the Forest Service brought it up through a letter along in July of that year.

Q. What was the valuation set on the entire tract by yourself at that time in—

A. That was more or less indeterminate. We thought it had a high potential value, but we did discuss it with the Forest Service, at their suggestion, I believe, at a price of \$6,000. They made a rather definite offer or suggestion of offer at \$6,000.

Q. How much were you attempting to get for it?

A. I am quite certain that I started off with a figure of \$20,000.

Q. Then you ultimately got down to at least as low as ten thousand, didn't you? A. I did.

Q. That exchange was to be for a specified number of thousand board feet of Douglas Fir timber to be cut by you at a certain stumpage price, was it not? [782]

A. No, not at that time. I think the 1943 negotiations were based on cash deal.

Q. In November of 1943 in the course of those negotiations you were advised by the Forest Service that the negotiations for an exchange in so far as the 40-acre tract was concerned would have to be held up

(Testimony of Paul Winans.)

because of a possible defect in title of the 40 acres?

A. I think I should qualify my answer there. The answer is "Yes" but definitely with qualifications.

The Court. Go ahead and tell us what the qualifications are.

The Witness: Yes, your Honor. The Forest Service had never at any time mentioned any suspect or question of flaw in the title, as their correspondence and particularly their letter of September 24th will indicate where they were dealing on an extra 65.88 acres. Following that, in a personal call at the office of the Forest Service in the Terminal Sales Building here in Portland, I myself told them that there was a question of title. Before that they knew nothing about it.

Q. You say you raised the question of a possible defect in title of your own initiative rather than that being brought to your attention first by the Forest Service?

A. Absolutely, that is true. I told them first. They had never raised a question.

Q. At what point was it, then, in those negotiations in the [783] later part of 1943 that the question of title insurance or an abstract on the property was first raised between you and the Forest Service, if it was?

A. That needs a little qualification, also.

The date that there was first a definite discussion with the Forest Service was on December 4, 1943.

(Testimony of Paul Winans.)

However, prior to that I had made some investigation about getting title insurance.

Q. At that same time were you not also thinking about the possibility of using that property as security for a loan from the Farm Loan Bank?

A. A collateral security for an already-existing loan that was in earlier. That came about more or less coincidental, and, I am sure, before the date of October 23rd when I told the Forest Service.

Q. You did not disclose the question of the title insurance—or the title defect—to the bank, did you?

A. I would rather refer to it as a question of title. I did. I made a special trip to The Dalles in respect to the condition of this loan on the farm, and I remember definitely at that time that I told Mr. Victor G. Peterson, the Secretary-Treasurer of the National Farm Loan Association at The Dalles, that there was a question of title to the property.

Q. Would the Crier hand to the witness what has been marked for identification as Exhibit [784] 63-A?

Mr. Lindsay: What is the date of that letter?

Mr. Buell: That is a letter of the United States Forest Service to Paul Winans dated November 6, and a letter of Mr. Winans to the Forest Service dated November 22, 1943.

Q. Now, Mr. Winans, following the receipt of that letter from the Forest Service and your reply to it with regard to the possible title question, had you decided in your family to have the title transferred from your father to your sister, Ethel, was it not?

(Testimony of Paul Winans.)

A. I think that came several weeks later.

Q. It was all in the course of these same negotiations for a possible exchange of timber with the Forest Service?

A. You mean that decision to have it transferred?

Q. Yes. A. No.

Q. You say that the decision to have the title transferred to your sister did not arise out of the negotiations with the Forest Service for an exchange of timber?

A. I am certain it did not, except to this extent, when it did, was arrived at it was to relieve my father who was critically ill at the time of worry and burden and passing title.

Q. Did your father know at that particular time that you had been carrying on these negotiations with the Forest Service?

A. He certainly did.

Q. Then what was the reason for a transfer of title to your [785] sister?

A. Because of my father's condition, his illness. I would say that my father suffered a stroke which from its inception along in October of that year rendered him entirely bedfast, but at the same time it seemed to step up his mentality, always a brilliant mentality. If anything, it stepped up his grasp of affairs.

Q. Was there any written document or memorandum or anything in writing whatsoever covering the terms or conditions of this so-called trust under

(Testimony of Paul Winans.)

which your sister Ethel was to hold the title to that property?

A. No, there was no other written document or condition.

Q. Was that transfer to your sister Ethel made before or after you had first consulted Mr. F. M. Deneffe, an attorney in Portland, in connection with the title to the Lost Lake property?

A. It might have been talked about, but no decision was arrived at until afterward.

Q. Had you discussed the question of a possible issuance of title insurance with the Hood River Abstract and Title Company before you had title transferred to your sister?

A. Yes, in November, November 20, 1943.

Q. What was that discussion—first of all, was it with Mrs. Sinclair?

A. Yes. [786]

Q. What was the discussion?

A. At that time it was merely a matter of exploration of possibilities.

Q. Did you tell her there was a question, or possible question, as to your title to the 40 acres?

A. No, I did not.

Q. Then what was the discussion that you just referred to of possibilities? What possibilities do you mean?

A. Well, to give a true picture of that, it perhaps would be a little lengthy; however, I do know that in November, that very same day that I had been at the office of the County Clerk in Hood River and was looking up the chain of title myself, and

(Testimony of Paul Winans.)

that I was referred from there to the Hood River Abstract Company to furnish some information that the County Clerk did not have and thought that Mrs. Sinclair might have.

Q. What was the information that they thought that she might have?

A. Well, I wanted at the courthouse to see the connecting link in the chain of title from the United States Government to the State of Oregon, and they had nothing and could throw no light on how or where to get it nor why.

Q. Then what did you find out as a result of your inquiry at the title office?

A. Mrs. Sinclair could throw no more light on it than they did at the courthouse. [787]

Q. So then what did you do?

A. I asked Mrs. Sinclair how in that case, then, did the legal authorities, the attorneys, clear a title in the instance of a mortgage that we had placed on the property, how did they clear it as between the United States Government and the State of Oregon. Mrs. Sinclair replied, "Oh, the lawyers understand that," or words to that effect.

Q. Was the question of title insurance to the property discussed at that time?

A. I didn't—I think on that date I am quite sure Mrs. Sinclair solicited that matter to sell me title insurance. I might say that at that time I was contemplating having an abstract which we had furnished in connection with the home loan to Mr. Frank Hilton, attorney, in 1923, which would take

(Testimony of Paul Winans.)

very little work to complete, and that was what I had in mind.

Q. You say that she suggested that you get title insurance instead of a continuation of the abstract?

A. Very definitely so.

Q. Then following the conveyance to your sister the application was made for the title insurance policy from Mrs. Sinclair, is that correct?

A. No, before the transfer of title to my sister December 21, 1943, I am quite sure.

Q. That was when the application was made?

A. Yes, I think I ordered a report at that [788] time.

Q. That was before the deed to your sister was recorded?

A. I could get tangled up on that, but in my mind the deed was not executed until around December 30th. I had not referred to the date lately, but I believe that to be correct.

Q. I think that is correct. I think it is admitted.

Mr. Jaureguy: It is stipulated. Pardon me.

(Discussion off the record.)

Mr. Buell: The stipulation shows that the deed was dated December 29 and recorded December 30th.

Mr. Jaureguy: 1943.

The Witness: Well, that answers the question. It was after I had ordered a title report.

The Court: I have some doubt as to the relevancy of much of this testimony. I wonder if you could shorten it.

(Testimony of Paul Winans.)

Mr. Buell: I shall endeavor to, your Honor.

The Court: Is it your contention now that Mr. Winans has perpetrated a fraud on the title insurance company, Pacific Abstract and Title Company, and therefore, because he did it then he is likely to do it now?

Mr. Buell: No, that is not the theory of this line of questioning, your Honor. The purpose of it is to bring out specifically the, not only the complete knowledge of Mr. Winans as to the state of the title and the investigation that he had made of it, but also to show or to accentuate the proposition of the predicament that he would be in in the face of previously [789] existing records as a result of this Pacific Abstract and Title Company deal if he were to attempt to sell a marketable title to some third party without a disclosure of the previously existing defects in it.

The Court: Well, the testimony was that he did disclose. I think we can just assume that.

Mr. Buell: There is also testimony that he didn't, and I think his predicament, if the fact developed that he actually didn't, has probative value as bordering on the credibility of the witness, but I am about to complete this, your Honor.

The Court: You do not have to convince me that a man who has not title to a property before he attempts to sell is in a pretty bad way.

Mr. Buell: I did not follow you. I do not understand that.

(Testimony of Paul Winans.)

The Court: I do not need to be convinced that a man who attempts to sell property that has a defect or that he does not hold title to is not in a difficult position, ordinarily.

Mr. Buell: In any event, Mr. Winans, you never pointed out to the Hood River Abstract and Title Company or the Pacific Abstract and Title Company which issued the policy this possible question of a defect of the title until after the policy had been issued, is that correct?

A. I would say that practically I did, because the purpose of my trip to investigate there I pointed out right there where [790] the possible question of title lay.

Q. But that was the extent of your pointing out?

A. Yes.

Q. A possible flaw?

A. That was the extent.

Q. The question of survey was not mentioned?

A. No.

Q. Mr. Winans, your family had paid all of the taxes up until the time of your transfer to your sister and continued, following the settlement of your claim with Pacific Abstract and Title Company, paying all the taxes on both the Government Lot 1 and the 40-acre tract?

A. That is true. There was a period in there in which some of the taxes were paid by the mortgagee, in which he was subsequently reimbursed.

Q. Now, why was it that you continued to pay those taxes on the 40-acre tract after you had settled

(Testimony of Paul Winans.)

your claim against the Pacific Abstract and Title Company?

A. Our position in the settlement with the insurance company remained exactly as it had been all the time. There was no change, and we never surrendered our right, our claim of right to ownership of that property at any time before that or since until the sale of the property to Mr. Parker—Stegmann, rather—Mr. Parker, eventually. That is where the deed, to whom the deed was made anyway.

Q. Did you continue or claim an interest in the 40-acre [791] tract after the settlement of your claim with Pacific Abstract and Title Company?

A. Certainly; the entire family, myself and the family, felt that our position remained exactly the same. We were not surrendering, and I think the file will show that we told the Forest Service that after they rejected the offer.

Q. You felt that you still owned the property or that you just had some contingent interest that might be perfected in it?

A. I would say that we had an equity, at any rate, in the property.

Q. You then, following the Pacific Abstract and Title Company settlement, you retained the services of an attorney to attempt to perfect your title by a special Act of Congress, did you not?

A. That is right, Mr. Sever.

Q. You were advised by him, were you not, that

(Testimony of Paul Winans.)

the only way in which the title could be cured was by a special Act of Congress?

A. No, I would not say that. We employed him to accomplish the confirmation of title in us by that means.

Q. Well, you never learned of any other possible way in which the title could have been perfected, did you?

A. It is my theory and I think based on local custom——

Q. Just wait a minute, now. I will rephrase my question, [792] and then answer it, if you will, and make your explanation.

Did you ever learn from any attorney or any other person any other specific way in which you might perfect your title to the property other than by an Act of Congress?

A. I think through the courts we did by permission of the, securing permission of the United States Government to bring suit to quiet title.

Q. Was that before or after this Pacific Abstract and Title settlement?

A. Definitely before, long before, and I think the matter was brought up in discussion with Counsel.

The Court: It was some time prior to 1944, then?

The Witness: Oh, yes, your Honor.

Q. (By Mr. Buell): Going back to the property itself for a moment, Mr. Winans, what, if anything, had you or any of the members of your family ever done with reference to making any improvements

(Testimony of Paul Winans.)

upon or doing anything on the 40-acre tract? Do you understand what I mean?

A. I think I do, and I would like to refer that as before the Stegmann deal. In 1922 we, I think, surveyed a portion of the property with the purpose of putting it on the market for sale in some homesites.

Q. Let me interrupt for a moment. Wasn't that survey limited only to Government Lot 1?

A. At that time it covered only, for the property on Lot 1, [793] but it was contemplated that when the time come that there might be more call for homesites it would be enlarged to carry on to Lot 2 or the 40 acres.

Q. But what specifically was done, actually physically done on the property by you or any of the members of your family?

A. There had been campsites cleared from time to time, some trails opened up, a boat built and kept on the lake for the family use and moored on this property, and specifically about the time of this grounds survey there was a water filing. The head works was on the 40 acres, and we did start a dam there, filed a notice.

Q. That is, was that sometime in the 'twenties?

A. Yes, I would say offhand around 1922.

Q. That consisted of filing your water rights on that particular inlet creek?

A. That is right.

Q. And building a small dam located on the 40-acre tract?

A. That is true.

(Testimony of Paul Winans.)

Q. The campsites that you mentioned just a moment ago, they were all located on the 25-acre tract, were they not?

A. All but one, the one in which myself and an assistant set up when we were building this head works for the water appropriation.

Q. Following the completion of that, the building of that head works, you never used that campsite again, did you? [794]

A. Not that I recall.

Q. And the campsite itself just consisted of a little clearing where you could pitch a tent, something of that nature? A. That was it.

Q. But no buildings were ever built on the 40-acre tract? A. No.

Q. And no roads or trails were built through the 40-acre tract?

A. Well, a trail was opened up through the property to this head works.

Mr. Buell: That completes the direct examination of Mr. Winans, if the Court please.

The plaintiff would like to offer at this time Exhibit 63-A which was identified by the witness.

Exhibit No. 64, a letter dated January 10, from the Mt. Hood National Forest to Mr. Winans.

A letter from Paul Winans to Pacific Abstract and Title Company dated January 13th, Exhibit 65.

A letter from the Forest Service to Mr. Winans dated January 28, 1944, Exhibit 66.

Letter from Paul Winans to Forest Service dated February 5, 1944, Exhibit 67.

(Testimony of Paul Winans.)

Letter of Paul Winans to Pacific Abstract and Title Company dated February 9, 1944, Exhibit 68.

Letter of Ethel Winans to Pacific Abstract and Title [795] Company dated March 3, 1944, Exhibit 70.

Letter of the State of Oregon Land Board to Frederick M. DeNeffe, dated February 23, 1944, Exhibit 69.

I had one additional question, your Honor, which will be short.

Would you hand the witness Exhibit 70, please.

Q. Now, Mr. Winans, that is a photostatic copy of a letter from your sister to Pacific Abstract and Title Company in connection with the settlement of your claim against that company. Was that letter written by yourself for her signature, or was it written by Miss Winans?

A. Let me examine one moment.

Mr. Lindsay: Which letter is this?

Mr. Buell: The letter of Ethel Winans to Pacific Abstract and Title.

Mr. Lindsay: Hasn't that been stipulated, that that was written by DeNeffe for Ethel Winans' signature?

Mr. Buell: I don't believe it had been so stipulated.

The Court: It has been so stipulated?

Mr. Buell: I do not believe it has been stipulated as to that.

The Court: What Exhibit number?

(Testimony of Paul Winans.)

Mr. Buell: Exhibit No. 70, your Honor.

Mr. Lindsay: Paragraph 13 of the stipulation says that by letter dated March 3, 1944, drafted by F. M. DeNeffe and [796] signed by the defendant Ethel Winans the claim was made against Pacific Abstract and Title.

Mr. Buell: I am sorry. I did not understand that. I have no further questions.

The Court: All right. It may be admitted. All of them are admitted, there being no objection to any of them.

(The documents previously mentioned and having been identified as plaintiff's Exhibits 63-A, 64, 65, 66, 67, 68, 69, and 70, were thereupon received in evidence.)

The Court: We will take a recess.

(Recess taken.)

Cross-Examination

By Mr. Jaureguy:

Q. Now, Mr. Winans, as I understand it, on December 21, 1943, you applied to the title company for title insurance?

A. That is the date that I fix.

Q. On December 29th your father executed a deed conveying this property to your sister?

A. Yes.

Q. On December 30th the same year that deed was recorded?

(Testimony of Paul Winans.)

A. Yes, I am sure that is correct.

Q. That is the same date as the date of the title insurance policy that was issued? [797]

A. I think that also is correct.

Q. On January 6th next, six days later, seven days later, you made a written offer to the Government to sell this property to the Government for \$8,000?

A. Yes.

Q. On January 10th that offer was rejected?

A. Yes.

Q. Because of the title? A. Yes.

Q. Was that the first letter you had gotten from the Government after the conveyance from your father to your sister?

A. To my sister?

Q. Yes. A. I believe so.

Q. Then on January 13th, 14 days after the title policy, you notified the title company of this alleged claim?

A. Yes.

Q. At any time during your negotiations with the title company did you call the title company's attention to this prior correspondence you had had with the Government prior to the time that you ordered a title policy?

A. No, not farther than possibly it might have been mentioned that we were contemplating a sale. I think it was.

Q. I am speaking now of the correspondence from the Government that told you that the Government claimed the property. [798]

A. I made no mention of that factor.

Q. But, as I understand it from your testimony

(Testimony of Paul Winans.)

this morning, prior to the time you ordered a title policy it was you that called the Government's attention to the defect and not the Government that called it to your attention?

A. I am very certain of that.

Q. Now, you recall your testimony that you gave on deposition on August 20 and 21, 1952?

A. Yes.

Q. I want to call your attention to some of that testimony on Pages 44 and 45. I will summarize it by stating that you testified at that time of the tender by the state in 1907 to your father.

A. I assume that is correct. I am not looking at the deposition.

Q. Then following that I want to ask you whether or not these questions were asked and these answers given.

A. Yes.

Q. Well, you don't say yes until I read them because maybe you do not agree.

A. Well, I am just acknowledging your statement.

The Court: Do we have copies of those depositions?

(Deposition was presented to the witness.)

The Witness: 44 and 45?

Mr. Jaureguy: Yes; now we are on page 45 about two-thirds [799] of the way down on page 45.

A. Yes, sir.

Q. "Q. So you and your father knew of that connection at that time?

(Testimony of Paul Winans.)

“A. Yes, but my father refused it right here and now.”

A. Is this page 45?

Q. Page 45 of your deposition about two-thirds of the way down:

“Q. So you and your father knew of that contention at that time?”

Let me know when you have found it.

A. I am sorry. You have given me Mr. Parker's deposition. It does not read that way.

(Another volume presented to the witness.)

The Witness: Yes; this is Paul Winans, yes, Mr. Jaureguy.

Q. (By Mr. Jaureguy): “Q. So you and your father knew of that contention at that time?”

“A. Yes, but my father refused it right here and now.”

The Witness: Let me get oriented.

Q. Yes. Shall I start again? A. Yes.

Q. “Q. So you and your father knew of that contention at that time?”

A. May I ask what contention are you referring to? [800]

Q. “A. Yes, but”——

The contention of the Government, that is what that is referring to, you see.

A. All right. I think we can go.

“A. Yes, but my father refused it right here and now.” A. Yes.

(Testimony of Paul Winans.)

Q. "Q. Yet, following that letter and the refusal of your father to comply with it, you say no steps were taken to find out whether or not there was any merit in the contention?" A. Yes, sir.

"A. Not that I can recall or that I ever knew of.

"Q. When was the next occasion that anything was said about that?

"A. The next time it came up was when the Forest Service rejected the offer to sell on the ground that the United States Government owned or claimed to own the Northeast of the Northwest of 16." A. This letter is what I had in mind.

Q. Then after that testimony that I have just referred to, if you will notice in the deposition there was a short recess, and then when we resumed Mr. Buell who had been questioning you before resumed questioning as follows:

"Q. Can you state positively whether or not any [801] representative of the Forest Service verbally told you that the United States claimed title to the 40-acre tract before title was transferred to your sister? A. Positively not."

A. Yes.

Q. That was your testimony, was it not?

A. That was.

Q. Do you still say that that is the fact?

A. I would like to qualify slightly.

Q. All right. Do so.

A. At that time I stated, at all times, that this was a long time back and that I had not had opportunity to refer to any record and it would have

(Testimony of Paul Winans.)

to be subject to correction. However, I still stand on "Positively not."

Q. That is, that you state positively that no representative of the Forest Service verbally told you that the United States Government claimed title to the 40-acre tract before title was transferred to your sister?

A. Yes, that was my contention then and now.

Q. And it was not even discussed with the Forest Service? A. I didn't say that.

Q. Well, explain that. Was it discussed with the Forest Service?

A. Yes, after I had first opened the matter up and told them [802] of the question of title, definitely, but in this there was never a notice of any kind. It was sort of a nebulous thing that might or might not be, and that was the basis of their letters that I can foresee that you are going to refer to.

Q. I am glad you foresee it. So that it was you that called the attention of the Forest Service to it and not the Forest Service calling it to your attention?

A. That is right. At that time I could not have said so, but all this opens up the thing, and I have referred to files and refreshed my memory, and that is my testimony.

Q. If you would just as soon, I would like to have you turn to page 241. A. 241?

Q. Yes. A. Yes, sir.

(Testimony of Paul Winans.)

Q. You will recall, will you, that this was the next day, the next morning?

A. That is correct.

Q. I was questioning you here.

A. I remember.

Q. Now, we will start at the fifth line on 241.

A. Yes.

Q. "Q. At the time you applied for title insurance back in 1943, I think you said it was——

"A. Yes. [803]

"Q. ——you knew then that a claim had been made by the Government that it owned this property?

"A. No, the Government had never made such a claim.

"Q. You did not know that?

"A. Well, wait a minute. I think it had been slightly discussed, but, as far as making a formal claim, no.

"Q. Discussed with whom?

"A. Oh, I believe it came up in a discussion with Mr. Cook.

"Q. Who is Mr. Cook?

"A. He was then a land agent or something of that kind for the Mt. Hood National Forest.

"Q. How long before you applied for your title policy had this been discussed with Mr. Cook?

"A. I couldn't tell you now exactly; possibly a period of two or three months or something like that."

Q. You so testified, did you not?

A. Yes.

(Testimony of Paul Winans.)

Q. So he did tell you about it, did he not?

A. No, he did not.

Q. Well, I mean, did you mean to testify that he told you about it?

A. No, I meant to testify only that there had been some discussion. [804]

Q. Then your testimony goes as follows:

“Q. Could it have been as recently as ten days before you applied for the title insurance?

“A. There may have been some references to it at that time.

“Q. Now, I mean the first reference to it; could it have been as recently as ten days?

“A. I believe it was prior to that.

“Q. You believe it was prior to that. Would you say, then, that no reference was made to it until ten days before you applied for your title policy?

“A. I would not be able to say that.

“Q. What did he say about the claim of the Government?

“A. That is hazy in my mind. I believe it was discussed, though, that it came up. Subject to correction, I believe it did.

“Q. Did he explain the Government claim on account of lack of a survey?

“A. It might have been. I can't tell you what the discussion was. That was eight years ago, anyway, and I don't remember.

“Q. Over nine years ago?

“A. Naturally it would have to be that some such reference was made, I presume.

(Testimony of Paul Winans.)

“Q. Was that just one conversation, or was there [805] more than one?

“A. Again, I would not want to bind myself, but in all likelihood I would say that it was on more than one contact.

“Q. You say probably the first time he mentioned it to you was not as late as ten days before you applied for the title policy?

“A. That would be my over-all estimate at this time, yes.”

Q. You still say that you mentioned it to him, and he didn't mention it to you?

A. Let me myself re-read the last question. I was turning the page and didn't quite follow.

Yes, that was my testimony.

Q. Do you mean to say that you intended to testify at that time that you are the one that mentioned to him, and he didn't mention it to you?

A. No, I did not so intend because, as I said, all this was hazy in my mind and was subject to correction.

Q. “Q. Would you have discussed it with him as many as four times?”

A. Pardon me just one moment.

Q. I am at the top of 243.

A. Thank you. [806]

“A. Well, that is a difficult thing to say. My impression is there were several meetings and it might have been brought up at these discussions we had.

“Q. What is your recollection as to whether any-

(Testimony of Paul Winans.)

body was present when you were having the discussions with him?

“A. That would be an indeterminate matter at this time.

“Q. In other words, you don’t recall?

“A. No, I don’t recall.

“Q. I will ask you whether or not you have any recollection as to whether you discussed it with anybody else in the employ of the Government besides Mr. Cook?

“A. Discussed about this claim of title?

“Q. Yes. A. I recall of no one.

“Q. After you learned of this claim of title and before you applied for title insurance, did you seek the advice of any person as to whether or not the Government’s claim might have some merit to it?

“A. I think I did.

“Q. Would you tell us whether that was a lawyer?

“A. I think that was Attorney Frederick M. DeNeffe. [807]

“Q. I am talking now about before you applied for the title policy. A. Yes.

“Q. Did you discuss with members of your family whether it would be desirable, in view of the Government’s claim, to get a title policy to the property?

“A. I believe I did. We generally conferred and kept each other advised in that respect.

(Testimony of Paul Winans.)

“Q. Could you tell us which members of your family discussed the question of whether you should get a title policy?

“A. Probably my brothers and possibly my sister.

“Q. And would you tell us whether the decision to get a title policy was your own decision or whether they all joined in that decision?

“A. In the first analysis, it was my decision.

“Q. Your decision? A. Yes, right.

Q. “Q. Did anyone suggest you should not get a title policy? A. I think not.

“Q. So is it a fair statement, then, it was your decision and they acquiesced in it?

“A. Definitely so. [808]

“Q. Therefore, as a result of what Mr. Cook had told you, together with conferences with members of your family, you decided to get a title policy?”

Well, this answer, I will read it if you want me to. It has nothing to do with it. It is a little colloquy between three of us there.

You so testified, did you not?

A. Yes. You misread one answer there that I made. In about the middle of Page 244 you read, “In the first analysis.” I have it here, “In the final analysis.”

Q. In the final analysis it was your decision?

A. That is correct.

Q. You have made answers to these questions as I have read them? A. Pardon?

(Testimony of Paul Winans.)

Q. You answered these questions as I have read them, and with the correction?

A. Yes, this is the record, as I remember it. I don't see any need for any corrections there.

Q. Then if you will turn to 251. A. Yes.

Q. We are discussing there your conversation with Mrs. Sinclair, and finally, I think, it is Mr. Lindsay was questioning you, and then toward the bottom I interrupted. [809]

Q. (By Mr. Jaureguy): "Q. Did you tell her what Mr. Cook had said about the Government's claim? A. No.

"Q. You did not discuss that with her at all?

"A. No.

"Q. I am not saying this to be offensive, understand. A. Right.

"Q. I hope you will understand that, but did you think you were defrauding the Title Company under those circumstances?

"A. No, sir; I didn't. They are in the title business. I am not. It would not do me any good to go in there and say, 'Here is a good title. Insure it,' no more than going to say, 'Here is something wrong; don't insure it.' They are supposed to know.

"Q. They are supposed to know?

"A. Aren't they? Or do they?"

Q. That was also your testimony, was it?

A. Pardon?

Q. That was also your testimony? A. Yes.

Q. You must have read some of the decisions.

A. Pardon?

(Testimony of Paul Winans.)

Q. You must have read some of the decisions I handed to the [810] Court on that question.

The Court: What is the purpose of this interrogation, Mr. Jaureguy?

Mr. Jaureguy: Well, my purpose is because it is inconsistent with the testimony he gave on direct examination, that is, all except this last half-page, and I think that when a person testified one way that we have a right to show that at a prior time he testified otherwise.

The Court: I appreciate that.

Mr. Jaureguy: Particularly on cross-examination.

Mr. Krause: I would like to have you point out just how it was inconsistent. It was not as full as the testimony he gave here, but, as far as I can see, nothing inconsistent.

The Court: You will have an opportunity to argue that later.

Q. (By Mr. Jaureguy): Now, before you testified on deposition you had listened to the testimony on deposition of Mr. and Mrs. Parker and Mr. Stegmann; that is correct, is it not?

A. Mr. Stegmann but not Mr. and Mrs. Parker at all.

Q. You had read their depositions?

A. I had read Mr. Parker's, not Mrs. Parker's.

Q. So you had heard their testimony and you had seen the exhibits that had been marked?

A. I would not say as to the exhibits. I know

(Testimony of Paul Winans.)

there was some referred to. I had heard or read those two depositions, [811]

Mr. Jaureguy. I would like to offer in evidence Exhibit 103, which is a telegram from Mr. Winans to Mr. Parker. Everybody has seen it. I want to first offer it in evidence.

The Court: Is there any objection?

Mr. Buell: No objection.

The Court: It may be admitted.

(Telegram dated November 22, 1951, to Chet L. Parker, Vancouver, Washington, having been previously identified as Defendant's Exhibit 103, was received in evidence.)

Q. (By Mr. Jaureguy): On November 22, 1951, you sent Mr. Parker a telegram, did you not?

A. Yes, I believe, I think that is the right date. I did send him a telegram.

Q. It is Defendant's Exhibit 103 and reads as follows:

"Chet L. Parker, 302 East 7th Street, Vancouver, Washington. Can you contact me Congress Hotel, Portland, tomorrow 1:30 p.m. to 3:00 p.m. Re statement believe mutual interest best served through primary conference with you. Paul Winans."

That is the telegram you sent to Mr. Parker?

A. Yes, I recall that.

The Court: What is the date of that telegram?

Mr. Jaureguy: November 22, 1951. [812]

The Court: That was after the action was filed?

Mr. Buell: I believe so.

(Testimony of Paul Winans.)

Mr. Jaureguy: I do not know.

The Witness: If I may say, prior.

Q. (By Mr. Jaureguy): What was the statement "Re statement believe mutual interest best served through primary conference with you"? What were you referring to then?

A. There were a lot of factors, Mr. Jaureguy, building up before that that would take some time to explain. However, after this publicity came about through the breaking of this matter in the Hood River Sun, I and the family felt that we were being put at a disadvantage through this publicity through false statements, and we wanted to do something to correct it in the public mind. It was causing a lot of interested gossip and discomfort of mind to our people so I figured that I would do something about it, and before doing that, from what I had read in the paper, I thought it might involve perhaps also Mr. Parker with whom, so far as I knew, my relations were friendly, and I thought it was only fair to give him a chance to do something about it before I issued a statement.

Q. That was the mutual interest that you thought would be served through a primary conference? A. I thought it could be.

Q. Did you know about the threatened lawsuit or a lawsuit at that time? [813] A. Pardon?

Q. Did you know about this lawsuit or this threatened lawsuit at that time?

A. It is possible at that time that there had been

(Testimony of Paul Winans.)

a reference to it. I believe it was in the press, but that would be all that I would know about it.

Q. But you did not intend to talk with him about a lawsuit?

A. I couldn't say that. Perhaps I intended to give him a chance to talk about anything he might wish.

Q. What did you want to talk to him about?

A. I wanted to let him know that we were contemplating issuing this statement, if that would be of any interest to him, and I said there is a lot of other factors. Shall I go into them?

Q. I want to know what you intended to talk to him about?

A. Well, as a matter of fact, first Stegmann had made a representation to me, a promise, an explicit promise on another deal, some financing and——

Q. Are you talking about the housing deal now?

A. Yes.

Q. You wanted to talk to Mr. Parker about that?

A. Pardon?

Q. You wanted to talk to Mr. Parker about that?

A. I wanted to see what he might, what his position might be. [814]

Q. That is to serve your mutual interest?

A. That was what I had in mind.

Q. All right. What else did you want to talk to him about? A. I believe that is about all.

Q. Did you also send a telegram to Mr. Stegmann?

A. I say no, I don't recall of any such, and I am certain I did not.

(Testimony of Paul Winans.)

Q. Well, why not?

A. Because that, perhaps because that is the reason for this telegram. Stegmann had made these representations, that is, that he would make a loan up to \$10,000, his own proposition, if he got the deal. Secondly, he had represented that he had a man that was interested in the building business, from California, that he thought would go into it in a much larger way. Mr. Parker had brought this man up to contact me, a fellow by the name of Paul Wardell, and Wardell talked rather extensively about what he would do and rather definitely, and at the time of the closing of the deal, at the time of the closing of the Lost Lake transaction on September 11th, I again specifically asked Stegmann, "What about this financing?" I will revert back a little bit. I was at the point of having a mortgage made up to submit to him at the same time he laid down a deed to the property. but I passed that up and asked him about the financing, and he said that Wardell, he was sure that Wardell was going to go into it and could do so [815] much more for me that he thought that we should wait on Wardell to get into the matter, but, if he did not, that he, Stegmann, still would make the \$10,000 loan. He said to wait two or three more days for Wardell to appear, and if he didn't show up in that time to call him, Stegmann, at McMinnville, and he would make the \$10,000 loan.

Now, following that, I had no other contacts with these men. I just expected that we might have had, but they seemed to have then disappeared and

(Testimony of Paul Winans.)

avoided me like an evil spirit avoids holy water, and so I began to want to see what was behind it. I didn't have to have the financing, but if it was there I wanted to use it. So I first attempted to contact Stegmann, and I made several attempts to contact him by telephone, but it was always—I never got to talk to him at McMinnville. The report was that he was out on one of his large stock ranches in Eastern Oregon fighting fires, such as that, didn't know when he would be back. At one time Mrs. Stegmann answered the telephone, and she told me about him being out on a forest fire, and so, not being able to contact him, then I attempted to contact Mr. Parker by telephone. I did. I told him what about that Stegmann had promised this \$10,000 loan, and he said he did not know about that, but Stegmann had the money to do it with and that he was sure that Wardell would yet appear and go through with his representations. [816]

Now, none of those things came about because that was my purpose to find out where Parker stood on this deal as I would like to contact him and actually tried to in that telegram following the break of this Stegmann publicity up there. I thought that probably at that time Mr. Parker might be interested in some discussions and by that means I would get in contact with him and find out all about the feature of the financing which had been definitely promised.

Q. So that is what you had in mind when you sent this telegram about serving mutual interests through a primary conference?

(Testimony of Paul Winans.)

A. Yes; I wanted to get in contact with Mr. Parker. That is the picture behind the telegram.

Q. You did not have that conference, however?

A. Beg your pardon?

Q. You did not have the conference?

A. No; no, I never had any response to it at that time, later.

Q. Well, you knew he did not get the telegram until——

A. Well, I tried to find out whether he did or not by calling the telegram or telephone office, and I believe the report was that it had been left at his residence and that he had not received delivery.

Q. You remember that the last stamp on the envelope is December 6th?

A. Beg pardon? [817]

Q. Do you remember that the last stamp——

A. Let me see it. Maybe I do.

Q. Yes. A. I don't——

Q. The last stamp on it is December 6th, and could we find out when this lawsuit was filed?

The Court: November 27th.

The Witness: It was before I knew about it.

Q. (By Mr. Jaureguy): How long had you and the members of your family been discussing or considering this so-called reserved area that you were going to reserve about the lake?

A. I didn't quite get the question.

Q. How long had you been—when did you make up your mind or your family make up your mind

(Testimony of Paul Winans.)

that you were going to reserve a portion of this lake? A. This specific reservation?

Q. No, a reservation that you were going to reserve.

A. I would say from the very first inception of the consideration of sale to anyone of the entire property.

Q. Did you tell Mr. Linville and Mr. Monchallen anything about reserving any portion of it?

A. Yes.

Q. Now, what portion of it—what you wanted reserved of it was along the lake front, as I understand it? A. Yes. [818]

Q. When you reserved it, were you going to sell that as a separate piece, or were you going to divide it up among members of the family, or how were you going to handle it?

A. Oh, that would remain to be worked out. I think there was contemplation of a possible distribution of it among other members of the family.

Q. Division of it, and into about how many pieces would you plan in dividing it?

A. I would imagine not over three or four.

Q. Well, when Mr. Stegmann was up there the first time on the survey, didn't you divide it up into pieces then? A. No.

Q. Well, then, when those other men went up there—I don't remember their names, two men?

A. Are you referring to Mr. Haynes and Mr. Kuns?

Q. That is right.

(Testimony of Paul Winans.)

A. Yes, we completed the survey around the property so as to get some idea of what we were going to set out for the reservation, and endeavored to do it, and Stegmann just would not agree to any plan of our layout of the reserved area.

Q. I am talking now about the time that they were up there, I think you said on the 26th or thereabouts.

A. That is right.

Q. At that time didn't you have the surveyors divide it up [819] into several pieces?

A. No, we had not gotten that far. We would have had it done on the afternoon of September 26th, but Stegmann refused to agree to it, to do anything.

Q. Well, how many pieces were you dividing it up into then?

A. There was a definite understanding with Stegmann in advance that there was to be an area of approximately one acre on the water, shore line, in the northeast section of the property that would definitely be reserved there, and the rest of the ground then would come over there on the lake shore which Stegmann would get, and we would take the balance of the 8.88 acres in the swamp ground towards the southerly side of the property.

Mr. Lindsay: Will you read that last answer?

(Last answer read.)

Q. (By Mr. Jaureguy): But the eight and a fraction acres was the amount that the Winans family were reserving for themselves?

(Testimony of Paul Winans.)

A. That was reserved in the option.

Mr. Jaureguy: I wonder if I could get Exhibit 303.

Q. I want to hand you Exhibit 303 which you identified before and show you the figures in what I will call the left-hand margin although it depends on how you have it. These figures here, whose handwriting are they in?

A. I would say that looks like my own. I believe it is. [820]

Q. That looks like your own, and that totals up to 363,588 square feet? A. Yes.

Q. You figured that that was 8.346 acres?

A. Yes.

Q. And you have got this 363,000-plus by adding up the square footage into these rectangles?

A. No, I did not, I am sure.

Q. Well, let us take a look now.

A. All right.

Q. You start at the top. What is that?

A. That is someone else's subscription.

Q. I know. I am not asking you whether that is your handwriting. That is 231,554, isn't it?

A. Right.

Q. Isn't that the figure you put down there?

A. Yes.

Q. The next one is 17,408?

A. Yes, that is right.

Q. And the next is 19,806? A. Yes.

Q. And the next is 20,000? A. Yes.

Q. Next is 10,150? A. Yes. [821]

Q. Next is 10,650? A. Yes.

Q. The next is 12,500? A. Yes.

(Testimony of Paul Winans.)

Q. The next is 12,360? A. Yes.

Q. And the next is 13,520? A. Yes.

Q. The next is 15,640? A. Yes.

Q. And they total 8,346 acres?

A. I think the addition is correct.

Q. Yes, I think it is, too. A. Yes.

Q. Then I am holding this now so that the top is north, am I not? A. That is right.

Q. And the last 1, 2, 3, 4, 5, the last 6 of those numbers you read off are on the northeast portion of the small tract, are they not?

A. That is right.

Q. Then is this the way you wanted the acreage reserved?

A. This map was left with me by Mr. Stegmann, and I believe——

Q. Please answer the question that I asked. Is this the way that you wanted the reserved [822] area? A. No.

Q. How did you want it?

A. The way I have described. I was going to take an acre right over here and the rest of it in the swamp ground. (Indicating.)

Q. You say you were going to take an acre up here? (Indicating.)

A. One acre.

Q. Well, what about this 5.31 acres? Isn't that in the swamp ground? A. Yes.

Q. Yes; so you have got 5.31 acres in the swamp ground? A. Yes.

(Testimony of Paul Winans.)

Q. What about that immediately north of that, the next three large tracts?

A. Well, I know, I do know that was the understanding. That was what we finally arrived at, was something like that. This was not the final map.

Q. I understand that, but this map, however, does give you acreage in the northeast corner, doesn't it?

A. Yes.

Q. And it reserves——

A. No, it does not have my acreage there.

Q. I mean in the northeast portion is the property that you have included in adding up your eight—— [823]

A. I do agree with you, I say that they include that; but I will say further that this is only a check on the map that was submitted to me, trying to find out what they were driving at.

Q. I understand, but by this map the reserved area includes property starting at the northerly portion of the land fronting on the lake and continues all down the lake to within 150 feet of the south boundary, does it not?

A. To say that would be a misnomer. That would not be right.

Q. Why not?

A. Because this was not the final agreement at all between——

Q. I am talking about this map now.

A. Well, right, talk about this map.

Q. This map includes in the 8.346 acres, includes land fronting on the lake from the northern bound-

(Testimony of Paul Winans.)

ary to within 150 feet of the southern boundary, does it not?

A. Yes, it does, but it does not cover at all what they were talking about or what they agreed upon. I would not want to be misunderstood by that.

Q. Now, is any of that Lot 1 desirable homesites, that is not fronting on the lake?

A. That would be desirable as homesites?

Q. Yes. A. Yes.

Q. Do you mean that people would want to live on Lost Lake [824] and have other property between them and the lake owned by other persons?

A. If it were me, I would say that I might object, but I do know that there is many summer homesites in the woods that are not on lakes.

Q. Oh, yes; yes, I understand that, but you will agree with me that there could be no homesites on that small lot if you reserved the property set forth in this map, 303, that fronted on the lake?

A. That there could be none that were desirable back of it?

Q. None at all; there could be none that fronted on the lake? A. That would be right.

Q. Yes.

A. But, mind you again, that map has got no particular significance. It was not agreed on with anyone at any time.

Q. No, your option said that those 8.88 acres would front on the lake? A. That is right.

Q. Why did you want it all fronting on the lake?

(Testimony of Paul Winans.)

A. I said adjacent to; it couldn't all front on the lake.

Q. Well, adjacent to the lake.

A. It would have to run back.

Q. Yes, but why did you want it all adjacent to the lake? A. Pardon?

Q. Why did you want all the reserved area adjacent to the [825] lake?

A. Well, it was ours, and we were entitled to make the choice.

Q. Yes, that is correct, but why did you make that choice?

A. I made the choice giving the other man, intending to give the other man a fair break, keeping one of the most desirable locations, and we would take the rest of it all in the swamp ground.

Q. I do not think your objection to this map is that it was unfair to the purchaser, is that it?

A. Pardon?

Q. I do not think your objection to this map is that it was unfair to the purchaser.

A. Oh, not at all, just simply my own consideration.

Q. This map has a reservation of all the property along the lake front, takes all but the southern 150 feet; that is correct, is it not?

A. No, it is not correct.

Q. What is wrong with that statement?

A. Let me gather myself here, and I will try to clear that up, because to agree to that would be entirely wrong.

(Testimony of Paul Winans.)

Q. All right.

A. For one matter, isn't there another map around here, the final map?

Q. I have not seen it. [826]

A. Well, there is such a map.

Q. We are talking about this map.

A. All right; I had nothing to do whatsoever with laying out these areas that you see here. These are, I think, areas of about 100-foot frontage along the meander shore line of the lake from which line parallel lines, that is, lines parallel with the north line of the Lot 1 as you read into a depth of around 200 feet. I never saw that map or discussed it until Mr. Stegmann brought it to me and submitted it to me along about August 27th or 28th, and at that time Mr. Stegmann told me that he would have to have all of this area, including the property that we had a gentleman's agreement that we should have here to this point where he starts up to 600 feet on the meandered shore line of Lost Lake.

Q. You have lost track of the question, Mr. Winans.

A. All right; if I am lost, I will be corrected, then, but I cannot tell the facts of this without some explanation.

Q. You may give your explanation, but before you give your explanation, would you please answer my question.

A. I am sorry.

Q. And the question was whether or not this map does not reserve the entire lake front in the eight and a fraction acres, except the southerly 150 feet?

(Testimony of Paul Winans.)

A. It does not. [827]

Q. What portion of the lake front is not included there, then?

Mr. Krause: Well, your Honor, that map shows exactly how many feet there are in all of the areas laid out, and we can read as well as Mr. Winans, and the Court certainly can read it, and I do not think it is anything upon which he is entitled to interrogate the witness.

Mr. Jaureguy: I think that is a very good suggestion.

Mr. Krause: Read it yourself.

Mr. Jaureguy: I just wanted him—he testified the other day, and you didn't object to it then, to his testimony that that took away the northeast quarter.

Mr. Krause: He has explained exactly what this map was. He did not provide it. There was not any agreement.

Mr. Jaureguy: All right; I just wanted the record to show that the witness was in error the other day when he said that that map did not give him the northeast portion, because it does; it gives him the entire lake front.

All right; now, we can go on to another subject.

Q. Did I understand that when Parker was first mentioned to you he was referred to as a surveyor from Portland?

A. Certainly as a surveyor, and I believe, yes, I think Stegmann said from Portland.

Q. When did you first learn that he did not live

(Testimony of Paul Winans.)

in Portland? A. Pardon? [828]

Q. When did you first learn that he did not live in Portland?

A. I think about the first information I had on that was the article in the press in Hood River, that he was a Vancouver, Washington, resident.

Q. When did you learn that he was formerly from McMinnville?

A. Following that article I called on Mr. Travis, and he said that he had had a lot of difficulty in finding out who or what Mr. Parker was, but he had learned that he was a logging operator in the McMinnville area.

Q. When was that?

A. Following this first article in the paper. I can't give you the exact date.

Q. When was the article in the paper?

A. I can't give it exactly.

Q. The day after the deed was recorded?

A. Oh, no; it was a long time after that.

Q. Two weeks after? When was it with respect to this telegram? A. Before the telegram.

Q. Very long before the telegram? The telegram was November 22nd.

A. Oh, yes, a considerable time before that.

Q. Well, would it be as late as October 1?

A. Do we have anything to refer to on the date of that article in the paper? [829]

Q. I do not.

A. Well, I imagine that occurred in September and probably would have been before October 1st.

(Testimony of Paul Winans.)

Q. Now, how did you happen—when you agreed to sell this property, why did you make it in the form of an option instead of the form of a contract?

A. I am not a lawyer, but that was my concept of the way to go about it. I had some reasons, I believe. Firstly, in some of the questions there was raised why not an agreement to buy and sell or sell and buy, and I think that my reason for that was that I didn't want to have a paper that in case that there was a default on that we would have to have trouble correcting, and I had a deal with a responsible party on this, and there was just no reason to get in anything like that, so I told Mr. Stegmann to fix it up in the form of an option, and if he failed to go through with it he lost his option money. He said he understood it.

Q. You think if that was the understanding it would not bother you? A. Pardon?

Q. That type of paper, you thought, would protect you if it was outstanding?

A. You mean an agreement?

Q. No, the option.

A. I would think that would cut it off right there when the [830] time ran out.

Q. The original draft provided for a thousand dollars down, and, I think, four thousand in three days? A. Yes.

Q. And he begged you to extend that for seven days?

A. Yes, he said three days was too short.

(Testimony of Paul Winans.)

Q. And so you extended it to seven?

A. Yes.

Q. Well, is that the first time you learned that he was—his financial condition was such that he could not raise \$4,000 in three days?

A. No, I didn't know a thing about his financial condition at that time.

Q. Oh, you didn't?

A. Well, maybe I did in an indefinite way, but I had no reports, no responsible reports at the time.

Q. I don't mean responsible reports. I mean what Stegmann himself told you.

A. Stegmann didn't tell me anything. He evaded all questions.

Q. Didn't he tell you all about his white-faced cattle, his ranches that he had?

A. Oh, that was the very first meeting. I asked him what business he was in. I wanted to know something about it. He said, "Oh, mostly white-faced cattle. I sell some machinery."

Q. And he was purchasing this for a hundred thousand dollars [831] for a summer home for his family?

A. Oh, no, there was no discussion about price at all. He said he wanted to buy a place away back from people as far as he could get. There was no discussion of price.

Q. Well, the option has a price of a hundred thousand dollars.

A. Oh, yes, but that was six or seven weeks later.

Q. Yes, but nevertheless when you executed the

(Testimony of Paul Winans.)

option did you think he was buying it for a summer home, or was he going to log it?

A. I only had his word. He said he didn't know anything about timber. He just wanted to keep it the way it was, a primitive area.

Q. So you thought he was either having it for a summer home or just for sentiment; is that right?

A. That is what he said. I might have had my——

Q. Did you think a man under those circumstances needed to have an extension of time from three to seven days to raise four thousand dollars?

A. Was not that. As a matter of fact, it was my intention in the first place when I started a rough draft of that option to make him pay \$5,000 for the option. I thought I would be just a little easier than that.

Q. Why did you think you should be easy on a man of that apparent affluence? That was before he asked you for the extension. [832]

A. Yes, I didn't care much one way or the other. We had the other deal which I knew that I could get.

Q. Yes, I know, but answer my question, please. Why did you think that you had to be easy on a man that was being——

A. Well, certainly I didn't feel that I had to be, but I just thought, I didn't want to be a "whole-hog" on the deal.

Q. Do you think \$5,000 down on a \$100,000 deal is being a "whole-hog"?

(Testimony of Paul Winans.)

A. It would be pretty stiff where the other deal only called for a thousand earnest money.

Q. You thought then when you made this—when you got through with your draft, you thought that he was the type of man that a thousand dollars down would be what you could expect from him?

A. I think for a three-day period it wasn't too bad.

Q. Then later you extended that to seven days?

A. Yes.

The Court: Are you going to go into a new subject matter, Mr. Jaureguy?

Mr. Jaureguy: Yes.

(Discussion off the record.)

The Court: We will recess until 1:30.

(Noon recess taken.) [833]

PAUL WINANS

recalled as a witness in behalf of the Plaintiff and Third-Party Plaintiff, and, having been previously duly sworn, was examined and testified as follows:

Further Cross-Examination

By Mr. Jaureguy:

Q. I think you testified, Mr. Winans, that when you got down to brass tacks discussing price with Stegmann, you said that your father used to say that the property was worth \$25,000, and you thought at that time, at the time you were speaking,

(Testimony of Paul Winans.)

it was worth three to one? A. I said that.

Q. Were you referring to Lot 1, the small tract, or were you referring to both tracts?

A. I was referring to Lot 1. That was the only portion that was under consideration.

Q. Just the small tract? A. That is right.

Q. Then in 1943 when you were negotiating, 1943-1944, when you were negotiating with the government, was there a segregation in values between the two tracts in your discussion with the government? A. No.

Q. There was not? A. There was not.

Q. When you made them that formal offer, how much was that? [834] A. 65.88 acres.

Q. How much was the price you were asking?

A. I started off at \$20,000, but it finally got down to a tentative agreement of around \$7,500 to \$8,000.

Q. When you made them that formal offer in January in writing, what was the amount?

A. \$8,000.

Q. You think that the values had gone down then in the meantime? A. No, I did not think so.

Q. Why did you make them that offer then?

A. Because the sale of some property of a family holdings somewhere was very imperative at that time.

Q. Had you tried to sell it elsewhere?

A. Yes, I had been talking with another party.

Q. Well, now, when the government rejected that offer they said that they would give you \$2,000 for the small tract? A. Yes, they did.

(Testimony of Paul Winans.)

Q. Would you say, if it is judged on the basis of the timber on it, that three times as much for the larger tract than the smaller tract is about right?

A. I would not say anything like that.

Q. What would you say?

A. Well, after all, the basis that we were dealing on and on which the insurance was written was on the government's [835] evaluation of the property as a whole.

Q. But I'm asking you if you were to divide the two on the basis of the amount of timber between them, there is three times as much value in the timber on the larger tract than on the smaller tract?

A. Well, in the first place, we never thought of dealing at that time on the timber value, except the only way the government would approach it.

Q. Have you any objection to answering my question, please?

A. None whatever. I thought it was.

Q. I have asked you twice whether or not you felt on the basis of the timber alone that the larger tract had three times as much timber value as the small tract?

A. Very nearly, I would say.

Q. Thank you.

A. Based on quantity of timber.

Q. I beg your pardon?

A. Based on the quantity of the timber I think that would be about right.

Q. And the quality of timber?

A. Quality, I think it is pretty much the same.

(Testimony of Paul Winans.)

Q. Now, as I understand it, your testimony is that on August 18th, the day that the option was exercised, you did not see Chet Parker?

A. I did not see Chet Parker. [836]

Q. And you say that he did not tell you that from then on you should be dealing with him as he had purchased the option?

A. No, he definitely did not tell me that.

Q. You will say that you did not ask him what he expected, an abstract or title insurance?

A. No, I didn't even see the man. It could not have been.

Q. You will say that you did not tell him that he could not have any title insurance? If he wanted it, he would have to buy it himself?

A. No; definitely not, at any time.

Q. You will say that you did not, on the 18th of August, in his presence, look for your report or pretend to look for your policy of insurance?

A. Most certainly not.

Q. Then, as I understand it, on the 30th—or I won't say the 30th—on a later date, you and he and others went up to Lost Lake to work on the survey?

A. Yes.

Q. Could you give us your best recollection of the date? Was that the 30th or 31st? The reason I ask is I think that on one occasion you thought it was the 30th. Then on the next occasion you thought it was the 31st.

A. I made no notations and had no record of any kind on that, and to the best of my ability I fix

(Testimony of Paul Winans.)

it with August 30th, with [837] a variation of one day one way or the other. It could have been possibly the 29th, but I would say about around the 30th it would have been, more likely than the 31st.

Q. Could you tell us about the length of time you were up there?

A. Well, we started from the service station in the forenoon. It is impossible to tell you just what hour because I made no records, but let us fix it at perhaps 9:00 o'clock.

Q. Nine o'clock? A. A. M.

Q. You left the service station?

A. Yes, it could have been earlier; it could have been later by an hour, one way or the other.

We drove up to the lake. That would take perhaps 45 minutes. Then we went out on this job, and the purpose at that time was to drive iron stakes and set up bearing trees, and which Mr. Parker did with his instrument and the tape, steel tape.

Q. The question is how long you were up there?

A. I am sorry.

Q. That is all right.

A. I would say, I know that we ate lunch there, finished what work we had to do, and returned and had a little refreshments and came home, but I think it had been not later than the middle of the afternoon, could have been later. I would say [838] it would be in a variation of an hour or two one way or the other.

Q. You would say you were not up there, then, more than about four hours?

(Testimony of Paul Winans.)

A. Oh, I rather imagine it was more than four, probably five or six, and that is subject to correction. I do not really now recall.

Q. Do you remember whether you stopped after you got down to the place, or did they go right on?

A. I don't think there was much tarrying there. We were riding in. Stegmann was driving the car. I think we got out, and Mr. Parker also had a car, and I think we broke up quite immediately.

Q. Whether the 30th was Thursday and the 31st was Friday, I don't suppose that would give you any clues?

A. No, that would not help me any. I wasn't keeping a diary. I am sorry.

Q. Now, at the time you went up there on the 30th, had any different boundaries of the reserved area been agreed upon other than what are shown on that map Exhibit 303?

A. There was some difference. There was another map that was submitted and that we were going by at that time. This was not the map we were working from then.

Q. How many maps did you have altogether?

A. I saw two; this one and the other. [839]

Q. Is the other one—you do not know where we can get the other one? A. I beg your pardon?

Q. You do not have the other one?

A. No, I do not.

Q. Do you know where there is one?

A. No, I do not.

(Testimony of Paul Winans.)

Q. Would you say that the other one includes the boundaries that are described in the deed?

A. Yes, I think definitely it was the intent anyhow to follow the description—the description was set up on the basis of this second map.

Q. Well, the second map, you say, was already made before you went up on the 31st or whenever it was?

A. I don't know—well, pardon me a minute. Yes; yes, definitely it was.

Q. Well, what would you go up for if the map was already made that covered the reserved area?

A. Let's see, the first map, the one that we have here, is the one that Stegmann brought prior to the 30th or 31st, whichever date it was, and left with me. That is the one in which he served his ultimatum, as I called it, about what they would take or they wouldn't. That was left with me, and that is why I have it. Now, when Mr. Stegmann and Mr. Parker came up on the 30th or 31st, they had another map, and, as I remember [840] it, it didn't quite follow the set-up on this one.

Q. What was the necessity then—oh, it didn't quite follow it?

A. No, I think there was a difference.

Q. But was that the one that covered the property that is described in the deed?

A. Yes.

Q. Well, then, what was the reason for going up again if they already had the proper description?

A. The reason, as I recall it, was to go up there

(Testimony of Paul Winans.)

and drive these permanent stakes and set up the bearing trees.

Q. They already had the map?

A. Yes, definitely.

Q. Well, as a matter of fact, didn't you and Mr. Parker have some rather heated arguments about the reserved area when you were up there that day?

A. None, whatsoever.

Q. None, whatsoever?

A. None, whatsoever.

Q. Well, can you give me the—can you give me the occasion, if you know—first, I will ask you, do you know the occasion for making the new map with an entirely different boundary of the reserved area?

A. I do not know why. I knew they brought it.

Q. Was it the boundaries of this map or of the new map that [841] you objected to?

A. Of this map. There was no objection raised on this that—on this trip on the 30th. That had been settled and agreed to with Stegmann when he served his ultimatum.

Q. So that the boundaries as set forth in the new map and as set forth in the deed were satisfactory to you?

A. Yes, I accepted them as such. I had them checked by a competent engineer to see that it worked out.

Q. Under the description of the deed, you do not get the property in the northeast portion——

A. Pardon?

(Testimony of Paul Winans.)

Q. Under the description as set forth under the deed, you do not get the property in the northeast portion of this tract, do you?

A. No, I was forced to give that up when the ultimatum was served.

Q. I thought you said that the description in the deed was satisfactory to you.

A. It was after I had made the agreement and I was sticking to my bargain.

Q. I see, and you say that that was not the result of arguments that you had with Parker upon the tract on the 31st of August?

A. Absolutely not.

Q. You say that that new map was prepared and with you, was [842] up there on the 30th when you went up there?

A. Yes, they brought it with them.

Q. Therefore, they were not up there for the purpose of surveying new boundaries, but for the purpose of putting stakes in a boundary that had already been agreed upon?

A. On the second map.

Q. And it took four or five hours to do that?

A. Yes, it did.

Q. As a matter of fact, don't you recall that that new map never showed up until along about September 4th, or thereafter?

A. No, that would not be true. It showed up when I said it did.

Q. I think you said that Mr. Parker—that you told Parker that the title company had suggested

(Testimony of Paul Winans.)

you had defrauded them. Would you tell me which Parker that was? Was that Chet Parker or Vawter Parker? A. Chet Parker.

Q. Chet Parker? A. Definitely.

Q. You told him that the title company had suggested that you had defrauded them?

A. Oh, that came as an aftermath, after we had gotten around to conclude on the whole—just a comment on my own part.

Q. What day was that?

A. August 30th or 31st. [843]

Q. That is when you were up there on that survey? A. That is right.

Q. You say at that time he was not objecting to your getting the northeast corner on account of the timber there, but he wanted the timber?

A. He didn't tell me anything about wanting the timber.

Q. He did not? A. He did not.

Q. On the 8th I think you have said you were—Saturday, the 8th, you were in the City Engineer's office working out a description? A. Yes.

Q. Were you there alone? A. No.

Q. Who was with you?

A. Walter Stegmann, Mr. Rutlaw Haynes, and the City Engineer, Mr. Andreson, was in there for a short time, went out, told us to go ahead and use the office.

Q. Did you work out the description in the City Engineer's office? A. Beg your pardon?

(Testimony of Paul Winans.)

Q. Did you work out a description in the City Engineer's office?

A. Yes, so far as I know. They came about—after a time I had to leave Mr. Stegmann and Mr. Haynes and return home to [844] get my children to take them for a dental appointment, and when I returned this description was submitted in a type-written form.

Q. The same description you have here?

A. Pardon?

Q. The same description you ultimately used in the deed?

A. Well, that was, that was what the description was worked up from.

Q. I beg your pardon?

A. The description in the deed was worked up from it.

Q. From the one that was worked up from the City Engineer's office?

A. Yes, I don't think exactly like it. I know Mr. Parker had considerable objection to using a type-written prepared form.

Q. What were his objections to it?

A. Well, I think the terminology for one thing. That is, in this description, as I remember, it started from a meander corner between sections 9 and 16 on the lake shore, and, as I remember, it went by steps and bearings, a hundred feet, approximately a hundred feet, and from that point then, approximately another hundred feet, and approximately and approximately and approximately until it reached, I

(Testimony of Paul Winans.)

believe, six hundred feet, and Parker said that that "approximate" terminology was not good.

Q. When it was repeated so often? [845]

A. Yes, that was it.

Q. That is Vawter Parker, I take it?

A. Vawter Parker.

Q. So, on Monday you worked on the description again?

A. I don't know so much about the description of the reserved area. I think it was worked over to some extent. However, I believe that that question was pretty well set by the evening of the 8th.

Q. Well, I think you said that Vawter Parker had suggested that they take it over to the title insurance office and have them look it over.

A. Yes, he did.

Q. When did he make that suggestion?

A. Pardon?

Q. When did he make that suggestion?

A. I think that quite definitely was on the 8th. It possibly could have been the 10th.

Q. Was the title company open on the 8th, on Saturday?

A. I really don't know whether they stay open Saturdays or not. I don't have much business there.

Q. When Vawter Parker made that suggestion, did he say anything about that they were going to write the title insurance and that therefore they ought to approve the deed?

A. Did Vawter Parker say that?

Q. Something of that kind. [846]

(Testimony of Paul Winans.)

A. No one said anything about that.

Q. Had you had any conversations with Vawter Parker as to whether the purchasers or the Parkers, anybody——

A. None whatever.

Q. You said none? A. Pardon?

Q. You said none. I want to finish my question before you answer.

A. I am sorry.

Q. Had you had any conversations with relation to possible insurance by purchasers of this property with Vawter Parker? A. No.

Q. Did he say to you that he wondered whether they were getting title insurance?

A. I would not say that although I do know there was an element of wonderment about the whole transaction, the whole deal.

Q. Were there any elements of wonderment expressed with respect to title insurance?

A. I can't recall anything specific on that.

Q. Had you told Vawter Parker that you had collected from the title company on this same company? A. Yes.

Q. When did you tell him that?

A. I should rather think I told Vawter Parker that even before this transaction came up, just as a matter of everyday [847] conversation. It is my recollection that I told him about it.

Q. Well, how long before?

A. I don't see Vawter very much ordinarily, but I would say maybe a month or so before, without particular relation to this deal at all.

Q. When you took this deal up to him did you

(Testimony of Paul Winans.)

tell him again that this was the same property that you had collected from the title company on?

A. Yes.

Q. You did?

A. Yes, in the course of the business at hand, I certainly did.

Q. In connection with that, you did not have any discussion with him at all as to whether the purchasers were getting title insurance?

A. None whatever.

Q. None whatever? A. No.

Q. Did he express—was there any element of wonderment expressed by him as to whether there was “a fast one” being pulled on the purchasers?

A. No, not at all.

Q. Did he express himself as to whether the purchasers were—whether it was a good deal for the purchasers? [848]

A. I think not. I am trying to search my memory only.

Q. Did he ask you whether you did not think it would be a good idea to advise the purchasers about— A. No, he did not.

Q. He didn't. You didn't have any discussion with him on that subject whatsoever?

A. No, it may have been covered in private conversation that it was a peculiar looking deal, but that would have been all.

Q. That is, he thought it was a peculiar looking deal?

(Testimony of Paul Winans.)

A. I would not say that. Probably I subscribed as much to that as he did if we discussed it at all. I am not saying definitely if we did discuss it.

Q. But you did not discuss with him that it would be advisable to advise the purchasers of that?

A. I am certain neither he nor I advanced that thought.

Q. Or to advise them that the title was not too good?

A. I am certain it was not considered.

Q. That was not discussed, anyway. Whether it was considered, it was not discussed between you and Vawter Parker?

A. As to the advisability of enlightening them?

Q. I beg your pardon?

A. You mean as to the advisability of telling them about the condition of the title?

Q. Yes, that is right.

A. Yes, that had been told them over and over again. Vawter [849] did that.

Q. What is that?

A. They had been told, and I went over that with Walter Stegmann. He had been told over and over again.

Q. That is not the question I am asking you. We have been discussing now for some little time a discussion between you and Vawter Parker.

A. All right.

Q. Now then, you said it was not discussed between you and Vawter Parker as to whether you should enlighten the purchasers.

(Testimony of Paul Winans.)

A. Enlighten them as to what?

Q. As to this defect in the title.

A. I don't think it was brought up as a matter of discussion because I had already told Vawter Parker that point blank.

Mr. Jaureguy: That will be all.

The Court: Did you not testify that you asked Vawter Parker to prepare an instrument to be signed by Mr. Stegmann in which he acknowledged defect in the title?

The Witness: Well, your Honor, I prepared that myself and asked Vawter Parker if it would not be a good idea.

The Court: Was Vawter Parker present at the time you presented it to Stegmann for signature?

The Witness: I am sure he was.

The Court: Did you present that to Stegmann on the Friday before the deed was delivered to Mr. Abraham? [850]

The Witness: I am quite certain that I presented this to Mr. Stegmann on the 8th, but I would like to observe that the deed was not delivered even to Stegmann until the evening of the 10th. This is the final deed.

The Court: What day was the 8th?

Mr. Lindsay: Saturday.

Mr. Buell: Saturday.

Q. (By Mr. Jaureguy): You say the deed was not delivered to Abraham until the 10th. What was delivered on the 10th was a carbon copy, was it not, of the proposed deed?

(Testimony of Paul Winans.)

A. Oh, yes, surely, the money had been paid on the—it is my recollection that Stegmann carried away a copy of the deed which had been completed on the evening of the 8th.

Q. You were shown that carbon copy here, were you not, in your direct examination?

A. Of the deed?

Q. Yes. A. I believe I was.

Mr. Jaureguy: Has that been marked?

Mr. Buell: I think it has been marked.

The Court: What number?

Mr. Buell: 27.

Mr. Jaureguy: It is admitted in evidence?

Mr. Buell: Yes, it is.

The Court: It is admitted. [851]

Mr. Buell: Yes.

Q. (By Mr. Jaureguy): Would you be able to say whether this is the carbon copy that was—of the deed that was—the preparation of which was completed on the 8th?

A. Yes, without, of course, a close analysis, I am quite sure that is.

Q. That was the deed then that was given to Stegmann on the, late in the afternoon on the 10th?

A. Yes, I believe it to be so.

Mr. Jaureguy: Thank you.

The Court: Mr. Ryan?

(Testimony of Paul Winans.)

Cross-Examination

By Mr. Ryan:

Q. Was the evening of the 10th the last time you saw Mr. Stegmann? In this instrument that you referred to that you asked Mr. Stegmann to sign, on what date was that given to Mr. Stegmann, according to your memory?

A. What day it was offered?

Q. Yes.

A. I am quite certain it was on the 8th of September; however, I would like to allow myself a little variation there. It could have been the 10th. I believe it to be the 8th.

Q. Where was it offered? A. Pardon?

Q. Where was it offered to him? [852]

A. I think that was offered in Vawter Parker's private office.

Q. You testified you were under the impression that Mr. Stegmann was purchasing this property, the Lost Lake property, for a private retreat?

A. That was what he told me.

Q. This Exhibit 303 that you looked at prior to the recess this morning, the map, that was brought to you by Mr. Stegmann? A. Yes.

Q. And on that exhibit were you aware at the time that Mr. Stegmann was not reserving anything but about 150 feet of lake front?

A. You say he was not reserving anything but about 150?

Q. Yes.

(Testimony of Paul Winans.)

A. Oh, no, he was requiring all shown on the map, I believe, for 600 feet.

Q. Is that in the swamp area?

A. No, it is not. It is the best of the lake shore land.

Q. That northeastern section there running on the map, as I recall it when I saw it, that is all lake front area as it is marked out there as going into the reserved area; at that time; is that correct?

A. For 600 feet?

Q. Yes. A. Yes. [853]

Q. Was the amount of lake front area given you initially in the map brought up by Mr. Stegmann, Exhibit 303, more lake front area than you eventually obtained?

A. As submitted by Mr. Stegmann?

Q. Yes.

A. No, when first submitted by Mr. Stegmann, it was to include that 600 feet as shown on the map that we have been looking at, all of it.

Q. How much lake front area did he subsequently get?

A. He got about the 600 feet, as I recall it.

Q. On the morning of the 18th, I believe your testimony was that you went to Lost Lake in the company of Mr. Stegmann, a person introduced as his brother Carl, a Mr. Bogar and Mr. Haynes?

A. Yes.

Q. At the time you were walking into the Lost Lake area did you have any conversation with Mr. Stegmann that you recall?

(Testimony of Paul Winans.)

A. It is quite likely I did; however, I would like to have that open. I am not sure whether Stegmann was on the ground when we got there with the surveyors. It runs in my mind that he and his brother appeared on the ground when we were out working in the woods.

Q. You could not remember any conversation that took place at that time as you were going in; is that your testimony?

A. Not unless some specific point were submitted that would [854] refresh my memory. I don't remember of any particular conversation at that time.

Q. Was at that time or any other time on the day of the 18th the name of Chet Parker brought up to you?

A. Repeat please. My hearing is a little off.

Q. At that time or at any other time of the day or evening of the 18th was the name of Chet Parker brought up to you by Stegmann?

A. No, not at all.

Q. Now, the second map contained, so far as you were concerned, the reserved area as you finally agreed with him?

A. No, not quite. There was an adjustment made there under which I got some more ground in the final description in the deed.

Q. When was that adjustment made?

A. That was finally determined in Vawter Parker's office.

Q. Was it discussed up there on the day you

(Testimony of Paul Winans.)

were up there with Mr. Parker and Mr. Stegmann and his son?

A. Yes, to this extent, with Stegmann only, that by that time it was determined that in order for me, or our family to get the eight and a fraction acres that a line would have to be drawn from a certain point working in from the meander corner directly to the extreme southwest corner of Lot 1, and I then, I think, at that time submitted to Stegmann that if I should like to set the corner in or the line in around 200 [855] or 300 feet north of the southwest corner of Lot 1 in order to include all of the Inlet Creek on the reserved area, would it be given consideration. And I think that it was tentatively discussed then, but it was not determined at that time.

Q. When was it finally determined, in Vawter Parker's office?

A. Vawter Parker's office.

Q. Was Mr. Parker a participant in the discussion about that? A. Pardon?

Q. Was Mr. Parker a participant in the discussion up there about that, Mr. Chet Parker?

A. No.

Mr. Krause: Well, your Honor, I think that they should state which Parker they are talking about. I did not know who he was referring to until at this moment, whether it was Chet or Vawter.

Mr. Ryan: I did try to rectify it. I said Mr. Chet Parker.

(Testimony of Paul Winans.)

The Witness: No.

Q. This discussion that took place up on that area——

A. Was he in that discussion?

Q. Yes.

A. Well, he was there, but the discussion was with Stegmann.

Q. You have testified here that the taxes on this property were paid by your family except for an interval when a mortgagee [856] on the property paid the taxes. Which mortgagee was that?

A. W. B. Combs or A. B. Combs, his representative.

Q. Was his mortgage on the entire property?

A. Yes.

Q. Did he know about this defect?

A. I think that he did.

Q. Did you tell him about this defect?

A. Well, I negotiated that loan, and it is a long time back, and it would be hard to say that I did or did not. My impression is that I would have so done, consistently with all of my other representations.

Q. You cannot recall whether or not you did?

A. No, I couldn't tell you definitely, and I would not want to do that.

Q. At one time you said that Mr. Parker made some request about acquiring the back forty only?

A. Pardon?

Q. Did you testify that at one time Mr. Parker—Mr. Stegmann wished to acquire the back forty only?

A. Yes, he did.

(Testimony of Paul Winans.)

Q. Did that seem consistent with you to his desire to acquire a retreat away from everyone?

A. Well, it is pretty hard to say that any part of his talks was too consistent, but I accepted it as such. He did, [857] specifically did set up that he needed to have this forty, the back forty, as we call it, in order to protect the property he owned on the front forty. Someone might come and acquire it later and log it off and ruin this beautiful retreat that he was purchasing.

Q. But any acquisition of the back forty was purely in relation to the front property; is that what you understood?

A. Repeat that, please.

Q. Any request he made with regard to breaking up the back forty, in your recollection, related entirely to the lake frontage property?

A. He set it up that way.

Q. But, it is your testimony that at no time Mr. Stegmann indicated that he wanted this property for timber purposes?

A. Absolutely to the contrary-wise. He told me specifically he knew nothing about timber whatsoever, was not interested in timber.

Q. You felt that the property that he was seemingly willing to give you at the time that he gave Exhibit 303, the lake frontage property, was consistent with his idea of acquiring this property as a lake front retreat or as a retreat?

A. I don't quite get the point of the question.

Q. At the time he brought you Exhibit 303 did

(Testimony of Paul Winans.)

it strike you at all strange that Mr. Stegmann would be willing to relinquish that prime lake front property willingly in view of the fact [858] that his only purpose of use was for a summer retreat or retreat away from everyone?

A. Well, it certainly didn't sound like sense to me.

Q. And yet, it was Mr. Stegmann that brought you this map 303? A. Yes.

Q. Would you tell us when Mr. Parker and Mr. Haynes departed on the evening of the 18th?

A. Again——

Q. Mr. Parker and Mr. Haynes, the two surveyors, do you have some recollection as to when they left the premises down at the gas station on the evening of August 18th? A. Generally, yes.

Q. Was it before or after Mr. Stegmann left?

A. Pardon?

Q. Was it before or after Mr. Stegmann left?

A. I think that it was after Mr. Stegmann left. Mr. Ryan: I have no other questions.

The Court: Mr. Krause?

Mr. Krause: I would just like to offer in evidence the memo made by Steele—that is the Forest Service man—after this conversation on October 23, 1943, with Mr. Winans, and this comes out of the file. The exhibit does not have the year on it, but it comes out of the file of the Forest Service as of that date. I think counsel have all seen it. [859]

(Testimony of Paul Winans.)

The Court: While you are looking at that, may I ask one or two questions.

Examination by The Court

Q. Is it your testimony the first time Mr. Stegmann contacted you he told you he wanted to buy this property as a retreat? A. That is right.

Q. Now, at the time of the option or shortly before were you still of the opinion that he wanted the property as a retreat?

A. I accepted it as such.

Q. Well, now, if you wanted the reserve area to subdivide for lots, and you intended to sell that for use for summer cottages, didn't you?

A. That was a long time ago, sir.

Q. Well, for what purpose did you want a reserved area at the time the option was given?

A. Our family, for our family use.

Q. Did Mr. Stegmann know the purpose of the reserved area?

A. Very definitely. I told him just why we wanted it.

Q. And "family use" means for yourself and your brothers and sister and their families?

A. Those that might want to use some of it.

Q. Didn't Mr. Stegmann object to the reserved area by reason of the fact that it would impair his desire for seclusion? A. No, he did not. [860]

Q. Didn't you think that that was quite peculiar for a man to spend a hundred thousand dollars to get away from society and then have that whole Winans family over there?

(Testimony of Paul Winans.)

A. Truly, that is a new thought to me. He felt as though he were maybe King Midas himself.

Q. You testified that you were not very much concerned as to whether or not Stegmann purchased the property or not because through Mr. Linville you had a buyer who you knew had the finances with which to make the purchase and who had made you a firm offer?

A. I did so testify that, but, your Honor, back of that and behind it the time of emergency had passed in our family, and there was a sentimental reason attached to that property and we were pretty reluctant to sell any property to any one at all.

Q. I thought that you testified earlier that after you had talked it over with the family you figured that if Mr. Stegmann got real tough that you would abandon all the reserved land because you felt that the hundred thousand dollars was a lot of money for this property?

A. Well, it was beyond anything we had for consideration although working it up on timber values it was not far off. We were not thinking of it as timber values and by the time the thing had got around to where the family was interested in a sale they wanted to sell. [861]

Q. In other words, actually you were concerned as to whether or not Mr. Stegmann would purchase this property; were you not?

A. By that time, but certainly not in the beginning of the negotiations.

(Testimony of Paul Winans.)

Q. Well, how about the time that you entered into an option? Were you concerned at that time?

A. No, I would not say I was concerned. I would not have been hurt or disappointed if the whole thing had dropped out.

Q. Well, isn't it your testimony that if you had not sold it to Mr. Stegmann you would have sold it to Mr. Linville's client?

A. Yes, I think we would have.

Q. Now, the sale to Stegmann would have yielded approximately 23 or 24,000 dollars more than the sale to Mr. Linville, wouldn't it?

A. That is right.

Q. Don't you regard \$23,000 as a substantial amount of money? A. Yes, it is.

Q. And yet, your testimony still stands that you were not very much concerned as to whether Stegmann would buy or not?

A. Initially, certainly not, and by the time I would say—well, let us state it then from the time that we did reach a concrete understanding, from then on I think that the sentiment of the family was that they wanted to sell, and I know I felt [862] a little reluctant about it myself even then.

Q. You have used the word "sentiment" in two respects. Do you mean to say that it was the desire of your family to sell when they no longer had any great sentiment for the land itself that they previously had?

A. No, I think they still retained it, and it hurt a little bit to give that up.

(Testimony of Paul Winans.)

The Court: All right, Mr. Buell.

Mr. Ryan: May I ask a few more questions?

(Discussion off the record.)

Mr. Krause: I want to offer that exhibit in evidence as Exhibit 63-C. That is the notes of Mr. Steele of this conversation with Paul on October 23, 1943.

The Court: Any objection?

Mr. Jaureguy: Not if somebody is going to be called, no, I have no objection, but if anybody is going to be called from the Forest Service, I object on the ground it is hearsay, but I have no objection if somebody will assure me that somebody is going to be called from the Forest Service.

Mr. Buell: Mr. Ralph Cooke, the person to whom it is addressed, is subpoenaed.

Mr. Jaureguy: That is all right, then.

The Court: If that is the case, why introduce it now?

Mr. Krause: Well, everybody has had this Forest Service file available to them, and this was marked as an exhibit at the [863] time. I didn't suppose—they know that it is out of the Forest Service file. It has something to do with a conversation that he had with Mr. Steele that day.

The Court: Are you objecting to it?

Mr. Ryan: No.

The Court: It may be admitted then.

(Document, photostat of letter dated September 24, 1943, to Mr. Paul Winans from Foster

(Testimony of Paul Winans.)

Steele, previously identified as Plaintiff's Exhibit 63-C for identification, was received in evidence.)

Cross-Examination

(Continued)

By Mr. Ryan:

Q. Can you see that comfortably?

A. Reasonably so.

Q. This Exhibit 303 you were looking at this morning, this one map you say Mr. Stegmann brought you first? A. That is right, it is.

Q. You don't know the whereabouts of the second map?

A. No, they had it in their possession and took it with them.

Q. Now, as this map is given here, was this to be reserved area, as you recall? I am pointing at the, let's see, beginning here on the northeast corner and running along the meander line of the lake down to about 60 feet beyond the creek.

A. No, it was not. It was understood by Stegmann at the very beginning that we would keep out about an acre in the extreme [864] northeast corner, and from then on over to the swamp ground with the Stegmann's. From there on we would take the swamp ground over to the south line for the remainder of the eight and fraction acre.

Q. Did it include any land——

A. Oh, yes, it did.

Q. ——south of the creek?

(Testimony of Paul Winans.)

A. Oh, yes, down south of the creek all the way to the southeast corner of Lot 1.

Q. The southeast corner of Lot 1 is the end of the map as drawn here in pencil?

A. That is right. That is west to whatever point it would take to make up the 8.88 acres but not to include this (indicating). Stegmann was getting that. That was understood.

Q. Are you familiar with these figures here?

A. Yes, those are my own. I had forgotten all about them, but they are mine.

Q. At the time this map was given to you, it was your understanding that all but an acre in the northeast portion of the property as given here with regards to the lake frontage would be reserved area?

A. You mean to include this stretch in here (indicating)?

Q. Yes.

A. No, I did not. I never submitted any such thing. You must remember this was Stegmann's map or Stegmann's and Parker's. [865]

Q. That was what they submitted to you, at any rate?

A. Yes—no, this was the one that Stegmann submitted, but they had the second one.

Q. At the time Mr. Stegmann submitted this map, that was his intention, as far as he was concerned, as expressed by this map?

A. Do you mean it was the intention that we

(Testimony of Paul Winans.)

keep out a portion here and then Stegmann take over?

Q. No, my previous question asked you how much of this map represented reserved area on the lake front, and you have testified, as I understand it, that it represented all of these lots but an acre in the very northeast corner and specifying how the acreage was, and it ran down beyond the creek and took in the entire area down to the southeast corner——

A. No, I didn't mean to say that. What I meant to say is that first we get our acre. Then Stegmann gets all the rest of the good frontage to the swamp line. From there on we make up the balance of the reserved area.

Mr. Ryan: That is all, your Honor.

The Court: Go ahead, Mr. Jaureguy.

Recross-Examination

By Mr. Jaureguy:

Q. I think you testified on your deposition that when you told Stegmann he could have the property that you told him that what really influenced you was that he was going to use it as a retreat, and the other party was going to log it? [866]

A. Yes, I did tell him that. I didn't know specifically whether or not the other party was going to log it, but I did know that he was in the timber business.

Mr. Jaureguy: That is all.

(Testimony of Paul Winans.)

The Court: Who was in the timber business?

The Witness: Pardon?

The Court: Will you read it back?

(Last answer read.)

Mr. Jaureguy: I take it by the other party you mean Monchallen?

The Witness: Yes, Mr. Monchallen.

Mr. Jaureguy: Linville's client?

The Witness: That is right.

The Court: Mr. Buell? [867]

* * *

KENNETH ABRAHAM

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Kenneth Abraham, and you are a duly licensed and practicing lawyer in the State of Oregon with offices in Hood River, Oregon; is that correct? A. Yes, sir.

Q. How long have you been practicing law in Oregon, Mr. Abraham? A. Twelve years.

Q. Were you consulted by Mrs. Chet L. Parker in connection with the sale of the Winans' family timber lying adjacent to Lost Lake in the summer of 1951? A. Yes.

Q. Will you state the date upon which you were first consulted with reference to this sale, if you can?

(Testimony of Kenneth Abraham.)

A. Well, the date was September 10th, and it was approximately, oh, shortly after five o'clock in the afternoon, and it was in my office in the city of Hood River.

Q. Who came to see you at that time?

A. Mrs. Parker and Mr. Stegmann.

Q. Was that pursuant to an appointment?

A. No.

Q. And had you received any advice during the course of the day, [869] of the 10th, that Mrs. Parker or anyone, someone was coming to see you late in the afternoon in connection with a sale or land purchase transaction?

A. None whatsoever.

Q. Did you know Mrs. Parker at the time you first saw her?

A. No, never seen her before.

Q. Did you ascertain her name at that time?

A. I did not.

Q. Where was it that you first saw her?

A. Well, I first saw her in the waiting room or lobby of my office at about five o'clock or shortly after on the 10th.

Q. Then did she go into your private office?

A. I talked to her in the waiting room. I just came to the door and talked to her there for a few moments and asked her what she wanted.

Q. What did she tell you?

A. Well, it was either she or a man with her, Mr. Stegmann, and I cannot recollect for sure which one, but it was either one of them told me that

(Testimony of Kenneth Abraham.)

they would like to have me approve a form of bargain and sale deed. Incidentally, I knew Mr. Stegmann's name.

Q. How did you happen to know his name?

A. Well, my secretary had called me on my intercom and said, "There is a Mr. Stegmann waiting to see you."

Q. Did they have a proposed form of deed with them at that time? [870]

A. No, they didn't.

Q. Can you state with any certainty as to who was doing the talking, whether it was Mrs. Parker or Mr. Stegmann?

A. I can't state with any certainty as to that. I think I felt that I was dealing with the man. The reason I am confused about that fact is that the next morning Mrs. Parker is the only one that I dealt with, but in the afternoon of the 10th I believe that I could have been dealing with both of them. In other words, they were both entering into the conversation.

Q. After they told you they wanted to have you approve of a form of bargain and sale deed what next was done or said?

A. Well, I asked them where the deed was. I said, "Do you have the deed with you?" They said, "No." I said, "Where is the deed?" They said, "Mr. Parker is preparing it now and he will bring it right over."

Q. When you say "Mr. Parker" whom are you referring to?

A. Mr. Vawter Parker.

(Testimony of Kenneth Abraham.)

Q. Then what was the next thing that was done or said?

A. They asked me if I would approve the form of the deed. I asked them who was preparing the deed. They said Mr. Vawter Parker. I said, "I know Mr. Vawter Parker. I am quite sure the form of the bargain and sale deed will be quite satisfactory, and I have seen—I know Mr. Parker and I know his forms of deed are entirely satisfactory." I was anxious to leave the office.

Q. What did they say to that? [871]

A. They persisted that they wanted me to do this, and so I went into the inner office, and they stayed in the waiting room. I called Mr. Parker and asked him if he had this bargain and sale deed. He said at that time it was in his secretary's typewriter or he was just completing looking at it, and he would send it over, and he did in about, oh, I would say ten or fifteen minutes.

Q. During that ten or fifteen minutes period where did Mr. Stegmann and Mrs. Parker remain, out in the waiting room?

A. They remained in the waiting room.

Q. Then after the deed arrived what happened?

A. Well, the deed came in, was brought into the office, was brought in to me, and at that time I am quite sure that, although I cannot recollect for a certainty, but I am quite sure that both Mr. Stegmann and Mrs. Parker came into the office. I looked at the deed. It was just a regular bargain and sale form of deed in which the, it was an onion-

(Testimony of Kenneth Abraham.)

skin copy in which the name of a grantee was omitted. It was not a deed by entirety but a deed to an individual, that's right, and I just looked at it quickly. I don't think it took me 25 seconds to quickly scan and see that it was a satisfactory bargain and sale deed. I paid absolutely no attention to the description, and I said, "The form of this deed is satisfactory," and handed it back to them.

Q. Did you say anything besides that or——

A. No, I just said the form of deed is satisfactory, and that [872] is all I said then.

Q. Did she say anything?

A. Yes, she said, "Well, I am closing a real estate transaction, and I would like to have you assist me in the closing of the real estate transaction," and in response to that statement on her part I told her, first, it was after five o'clock, that nothing more could be done today, the court house was closed, and secondly, what was the nature of the real estate transaction and, "Did you have title insurance."

Q. What did she say to that?

A. She said that, "We have taken care of everything in this matter except that I would like to have you approve the form of this deed and to assist me in closing it." I asked her what she meant by "assist in closing." She said, "Would you assist me in seeing that the deed is recorded and stamps are placed on and the title checked as to," and she mentioned mortgage, a certain mortgage, I don't recall what the—who the parties were in the mortgage, and to check the records for a period of four or five days

(Testimony of Kenneth Abraham.)

prior thereto, and would I call Mr. Parker, Mr. Vawter Parker, and make arrangements to close this transaction, "tomorrow about 9:30." I told her I would.

Q. Did you?

A. I called Mr. Vawter Parker then, and I told him, asked him if they were ready to close this real estate transaction, that I had to check the records tomorrow morning, if we could close [873] it by 9:30 I would like to get it out of the way. He said that was perfectly all right with him.

Q. Then did you make any arrangements with Mrs. Parker or Mr. Stegmann as to when you would see them next?

A. I told Mrs. Parker or I told the both of them to come in the office the next morning about nine o'clock.

Q. Had you by that time learned the name of Mrs. Parker?

A. No, I hadn't. I had, in fact, assumed that her name was Mrs. Stegmann, but I had made no inquiry one way or the other.

Q. When you asked them about title insurance was anything said as to whether or not title insurance had been obtained on the property?

A. I did not receive a direct answer as to whether title insurance had or had not been obtained.

Q. Were you shown any preliminary report of title insurance as to that property on the evening

(Testimony of Kenneth Abraham.)

or the late afternoon of the 10th that you were just referring to? A. No.

Q. Did you do anything more in connection with the transaction that night? A. Nothing.

Q. Did you learn what the consideration or purchase price for the property was to be that night?

A. No.

Q. Was any indication of any kind given to you as to how much [874] was involved?

A. None.

Q. When did you next see Mr. Stegmann or Mrs. Parker?

A. I saw Mrs. Parker in my office the next morning about nine o'clock.

Q. Was Mr. Stegmann with her?

A. No, he was not.

Q. What did Mrs. Parker tell you at that time?

A. Well, she came in, and she had this onion-skin copy of this bargain and sale deed that I have mentioned before, with her, and she said, "Now, in closing the transaction I would just like to have you check up a certain mortgage and to also check the court house records with regard to any changes that the grantor might have made for four or five days back," the grantor on the deed being Ethel Winans.

Q. Then did she say anything else to you at your office other than what you have just outlined?

A. Nothing more.

Q. Then did you go over to the court house?

A. The two of us walked over to the court house

(Testimony of Kenneth Abraham.)

and I—I presume that I checked the mortgage records first because there had been this mortgage mentioned, to see whether it had been released. I checked the deed record. I checked the judgment record and the lien record, and I think I started to check the tax record or told her I was going to check the tax records, and [875] she said that was not necessary.

Q. Then what did you do?

A. Well, I told her that I had found nothing in this last period of time of four or five days which by that time I had assumed to be the date on which she probably had a preliminary report, although I did not know whether she had or had not received one. I found nothing on the record by Ethel Winans that had indicated any intermediate incumbrance on title, and I told her that.

Q. Then what happened?

A. Well, she said, “Well, we are ready to complete the transaction.” She said, “Would you take this check over to Mr. Parker’s office and get the deed for me?” I said, “Yes.” She handed me a check, and I took the check and started towards the court house door, and as I did so I opened the check, and that was the—I discovered the check at that time was a \$95,000 check, and I immediately turned around and came back to her and I said, “Mrs. Parker, this appears to be a very large real estate transaction. Are you sure that you have title insurance, and are you sure that the transaction is being handled and that you are being advised in the

(Testimony of Kenneth Abraham.)

way necessary to protect your interests?" She said, "I am quite sure about the way the transaction is being handled, and I am quite satisfied if you are satisfied with what you have discovered here this morning."

The Court: How did you know her name was Parker at that time?

The Witness: I did not know her name was Mrs. Parker at [876] that time. I am using that for identification.

Mr. Buell: Go ahead.

A. She said she was quite satisfied with everything, and so I went over to Mr. Parker's office, Mr. Vawter Parker's office, into his office, and he was alone at that time, and I went into his private office and told him I had a check, did they have the deed, and he said, "Yes,"—oh, by the way, I should go back just one step. I asked Mrs. Parker whose name I should have inserted as the grantee in the deed, and she said, "I will tell you when you come back with the deed." I went into Mr. Vawter Parker's office. I said "I have a \$95,000 check for a deed." I think the first question he put to me was, "Well, I haven't a name of the grantee filled in. Who should I fill in?" I said, "I will take it in blank."

Q. Was there anybody else present at attorney Parker's office when you arrived there?

A. Well, his secretary might have been in the waiting room. I am not quite sure of that.

Q. Were any of the Winans family there?

A. No.

(Testimony of Kenneth Abraham.)

Q. After advising Mr. Parker, or attorney Parker, that you would have to take the deed with the grantee's name in blank what was next said relative to going ahead with the transaction?

A. Well, the first thing he said to me was that, "There is a credit due to the purchasers on this," and I don't recall whether [877] he said, "Do you know how much," or, "I don't know how much," but anyway he said something to the effect that the amount of it had not been determined or approved, and we would have to wait for Mr. Winans. I said, "I don't know anything at all about a credit or any being due." I had not any information, none had been mentioned to me, and he said, "Well, Paul is supposed to be in here now. Let's wait until he comes in, and I will give you the check." So we sat there and waited, I think we must have sat there and waited there for at least ten or fifteen minutes when Mrs. Parker came in, come to Mr. Vawter Parker's office, and the secretary announced that Mrs. Parker was there and that—it is at that time that I first realized that her name was Mrs. Parker and not Mrs. Stegmann. I was assuming up until then, not, frankly, because of any deceit on the part of Mrs. Parker, but I was assuming, I think, that her name was Mrs. Stegmann. She had not given me any reason to believe that other than the assumption on my part because Mr. Stegmann's name had been given in my office when Mrs. Parker came in that night before.

(Testimony of Kenneth Abraham.)

Q. When she came in what was said at that time?

A. She wanted to know what the delay was, and we said we were waiting for Mr. Winans because we had to figure out what this credit check was. She said, "That's right, I do have a credit check coming," or words to that effect.

Q. Was she actually brought into attorney Parker's private [878] office or——

A. She was brought into Mr. Vawter Parker's office and sat down.

Q. Did she say anything else other than confirming that she was to get a refund check of some amount?

A. Well, we had a general conversation there.

Q. Was there any conversation as to the identity of the purchaser of the property at that time?

A. None.

Q. What else, if anything, did Mrs. Parker say while she was there in attorney Parker's office?

A. Well, I think she must have been there for five to ten minutes, and as her conversation could have been lengthy I don't recall all that she said. I recall some of the things that she said.

Q. What do you recall that she said?

A. Well, I recall very distinctly her saying that Mr. Stegmann was purchasing the property and that he was purchasing it for his wife, that she was having a new baby. He was purchasing it as a lodge for his wife.

Q. Do you recall anything else that she said at that time?

A. Nothing more than that.

(Testimony of Kenneth Abraham.)

Q. Did attorney Parker enter into the conversation there?

A. Oh, yes, well, we all chatted back and forth. We talked about the weather and other incidental things.

Q. Then when did Mrs. Parker leave? [879]

A. Well, it was after we had been there five or ten minutes, I am not sure of the time, why, Mr. Winans came up the stairs, and Mr. Vawter Parker knows Mr. Winans well enough so that he was able, as I recollect, to recognize his footsteps or his manner of walking. He said, "Well, here comes Paul now." So Mrs. Chet L. Parker went out Mr. Vawter Parker's side door as Mr. Winans went into the waiting room.

Q. What happened next?

A. I should say that she told us that she was going over to the court house or told me that she was going over to the court house, and then Mr. Winans came in, and he came into Vawter Parker's office, and there was myself and Mr. Paul Winans and Vawter Parker, and we had a—I should say Mr. Parker and Mr. Winans had a short conversation about the credit check. I had no knowledge at all as to the amounts that were to be credited back and forth, and they had a short conversation, and that was that. I do believe, getting back to when Mrs. Chet L. Parker was in the room, I do believe that Mr. Parker told her what he thought the amount of the credit check was, and I do believe that she said, "That's right." Then when Mr. Winans came in,

(Testimony of Kenneth Abraham.)

why, he verified the amount of the credit check to Mr. Parker, too.

Q. Can you recall that amount when that was mentioned by attorney Parker while Mrs. Parker was there?

A. I can't recall it, but I have it written down here if you [880] would like to have me refer to it.

The Court: There is no dispute on it?

Mr. Jaureguy: There is no dispute.

The Court: \$4,750; was it not?

Mr. Jaureguy: Yes, there is no dispute about it.

Q. (By Mr. Buell): Then after Paul Winans came in what developed then?

A. Well, after the credit check transaction transpired, why, I can't recollect whether that \$95,000 check was in my hand or whether in the ensuing conversation, which had now gone on for approximately 20 minutes, that is, prior to Mrs. Parker coming over and during the time that she came over and after she left and Mr. Winans was in there, during that time I feel that I laid the \$95,000 check down on Vawter Parker's desk, and after he and Mr. Winans had satisfied themselves on the amount of this refund Mr. Parker took it out of his checkbook or tore it out of his checkbook and handed the refund check to me, and he also handed me the check for the amount of revenue stamps Mrs. Parker—I should go back again—apparently had said, although I can't recall it, had apparently said that she would put the revenue stamps on,

(Testimony of Kenneth Abraham.)

which later developed to be true, gave me a check for the refund, a check for the revenue stamps, and handed me a signed deed by Ethel Winans with the grantee's name in blank.

Q. After that what?

A. He either handed it to me or he laid it on the desk, and I [881] picked it up.

Q. After that what happened?

A. Well, Mr. Winans who was standing during that entire time, as I recall it, and I was standing because I was anxious to leave, said to me, he said, "If Mr. Stegmann had been here I had intended to tell him concerning a defect in title having to do with a claim of the United States Government," and he said, "Since Mr. Stegmann is not here, I would like to tell it to you," and he said, "I would suggest that he not record the deed because I think that this defect can be better clarified by possibly Congressional action in the name of the Winans family rather than in the name of Stegmann." I think he must have spent another couple of minutes trying to explain what the defect is. I do not yet know to this day exactly what the nature of the defect is. I have not gone into it.

Q. Had you had any specific conversation with Paul Winans about the transaction prior to the time that he told you about the defect, or have you just related—by specific conversation I mean where you and Paul Winans carried on a conversation relative to some phase of this sale?

(Testimony of Kenneth Abraham.)

A. You mean prior to that morning in Mr. Parker's office?

Q. No, during the few minutes, 15 I believe you said, 15 minutes or so, that he had been in there and before the time that he told you about the defect had you had any other conversations directly with Paul about this transaction? [882]

A. No, I think the first direct conversation I had with Paul was when he turned to me and said, "If Mr. Stegmann had been here," up until that time his conversation was mainly between him and Mr. Parker as to this credit.

Q. After he told you about that defect what did you do or say?

A. Well, I told him that I had, that I was a little unhappy about this transaction, not realizing the size of it and so forth; that I had yesterday or the evening before and this morning attempted twice to advise these people that—and by these people I meant Mr. Stegmann and Mrs. Parker—that they should have title insurance and that this transaction should be handled carefully, and I had particularly done so again this morning when I found out the size of the transaction in the form of a \$95,000 check, and I had been told each time that they were satisfied with the title and satisfied with the transaction and they just wanted me to approve a form of deed and to assist in closing it, and I think I went on and said, "Paul, there is a time when you get sick and tired of trying to give advice if it isn't accepted."

(Testimony of Kenneth Abraham.)

Q. Did anything else occur there in attorney Parker's office there that morning?

A. No, not that I recall.

Q. What did you do after that?

A. I went out of the side door of Mr. Parker's office and downstairs and over to the court house, and Mrs. Parker was sitting on the only bench which is in the lobby of the Hood River County Court House, and I said, "Here is the deed. What name do you [883] want to put on the grantee?" and she said, "Chet L. Parker," and I stepped behind the counter of the Assessor's office, pushed a deed into one of the several typewriters in the Assessor's office and typed in the name of Chet L. Parker. I think she stood on the other side of the counter at that time. Then she handed me the revenue stamps. I just picked up the revenue stamps of which there were quite a number and proceeded to paste them on. After I had pasted them on and was cancelling them, I added them, and I noted that they involved more than a hundred thousand dollars' transaction. I told her we had put too much in the form of revenue stamps on the deed. She said, "No, we purchased an option from Mr. Stegmann for \$25,000 so I don't think"—and I think I handed her the deed then and I said, "The next window over," a small court house, as you know, "is the Clerk's window. If you just hand it into the Clerk's window they will record it." Now I may be wrong in that. I might have taken and handed it into the Clerk's window myself, but I know she paid the

(Testimony of Kenneth Abraham.)

Clerk's recording fee. I did not pay it, and I also know that she took a receipt, and I know from the court house records that the deed was mailed to Mrs. Parker because at the time the receipt was made the Clerk asked, "To whom do you want the deed mailed?" and she gave the address at that time. The address I don't recall.

Q. After that what next was done?

A. Well, I think Mrs. Parker—I haven't thought about this [884] for a long time, and I think she paid me my fee either there or in my office, I am not sure which. That was the last I saw of her. I believe she paid me right there in the court house and that I went over to the office although she might have come over to the office and paid. I can't say for sure. That is the last, I believe that is the last I have seen of Mrs. Parker before I saw her in this court room a week or so ago, although I am not sure on that either.

Q. Was there any discussion between you and Mrs. Parker following your return from attorney Parker's office as to what Paul Winans had told you?

A. Oh, yes, I told her again about this defect, and I did tell her again. I told her about this defect and told her——

The Court: Tell us what you told her.

The Witness: All right, I said, "Mr. Winans has told me there was something wrong with this title, and you should be sure that you have title

(Testimony of Kenneth Abraham.)

insurance although this is a very late stage of the game to start looking for it," and she said, "We are satisfied with the title." I said "All right."

Q. How much of what Paul Winans told you about the title did you tell Mrs. Parker?

A. Well, I am not sure how much I told her. As I say, Paul Winans told me very little. He told me that he felt, for example, he started his conversation out, I will attempt to repeat it as best I can. He told me that if Mr. Stegmann had been here he [885] would have told him this, that he didn't think that we should record the deed now; that there was a defect in this title that could be cleared up by Congressional action but could be better cleared in the name of the Winans family than in his. Now, I think I substantially told her that, and he told me in a rather very general fashion. As I say, I was in a hurry to leave, but he told me in a very general fashion that this defect had arisen over some failure to issue a patent or in just about that term.

Q. When you told Mrs. Parker that did she say anything as to whether or not she had heard or knew of the defect or question that you pointed out to her?

A. I don't think that she did. As I recollect it, she seemed to be just satisfied with the title as it was, and that was the type of term that she used to me in those three different instances, the one of the night before, the one at the time of receiving the check, and the one when I returned with the deed.

(Testimony of Kenneth Abraham.)

She used approximately the same phraseology, in other words, "We are satisfied with the title."

Q. Had she at any time by the time she paid you your fee and left, had she at any time during the whole transaction while you were connected with it shown to you a preliminary report of title insurance on the Winans property? A. She had not.

Mr. Buell: We have no further questions, your Honor.

The Court: We will take a five or ten minute recess. [886]

(Afternoon recess taken.)

(Trial resumed.)

KENNETH ABRAHAM

recalled, testified as follows:

Cross-Examination

By Mr. Jaureguy:

Q. Mr. Abraham, are you acquainted with Mr. Chet Parker, Mrs. Parker's husband?

A. Yes, sir, I am.

Q. Had you done some legal work for him prior to the time that Mrs. Parker came in?

A. Well, I handled a transaction with a client of mine in Hood River by the name of Vaughn who has a log boom in the Columbia River, and Mr. Vaughn came into my office with Mr. Parker, Mr. Vaughn being my client, and asked that I prepare an agreement by which Mr. Parker would purchase

(Testimony of Kenneth Abraham.)

the rights to boom logs out of his area there. In other words, there was set aside a certain area in which Mr. Parker could put in logs, and there was a definite consideration at that time paid for that right, and the contract was drawn, sold it at a thousand or \$1500.

Q. What was being done was that Parker was purchasing a portion of a boom?

A. He was purchasing a portion of a boom, that is, it was more of a right to use the boom. In other words, the land there is flooded by the Columbia River, but the land is owned by Mr. Vaughn, and he didn't purchase the land or any title to [887] realty there. I suppose, in a sense it was the purchase, a lease purchased, that there may have been a certain time in that agreement. That I cannot recall.

Q. About how long was that before Mrs. Parker came into your office as you testified to?

A. I would not be quite sure, but I think it must have been some time in 1950 because in 1950 we sold three or four rights in that boom area there of Mr. Vaughn's. I think it was in 1950.

Q. That had been several months then before this?

A. Oh, yes.

Q. You did not on that occasion meet Mrs. Parker?

A. I did not.

Q. You had never met her up to the time that she came into your office as you testified to?

A. I had not.

Q. Mrs. Parker testified that when she went in

(Testimony of Kenneth Abraham.)

there you were not there, and she left her name with your secretary, she went in alone and left her name with your secretary. Do you know whether that might have been possible?

A. You have brought that to my attention here sometime ago, and I carry a book in my office in which we record everybody's name who comes into the office on every day, and I went back and looked in that book and did not find her name.

Q. Did you find Stegmann's name? [888]

A. I did not find Stegmann's name, either.

Q. You did not find either one of them?

A. I did not find either one of them.

Q. So that that day your girl was not on her job?

A. It could have been that they came in there after five o'clock or by the time the girl had left, or she just neglected handling it right.

Q. But the girl was there at the time?

A. She was there.

Q. Because she advised you they were there?

A. That is right.

Q. There was nothing in Mrs. Parker's attitude or appearance or anything that would lead you to believe that she was trying to conceal the fact of who she was, her identity?

A. Oh, no, none at all.

Q. Now the next morning when she came didn't she give you a carbon copy of a title report?

A. She did not.

Q. Did you ascertain the book and page in which the Koons mortgage was recorded?

(Testimony of Kenneth Abraham.)

A. Did I ascertain the book and page?

Q. Yes. A. I am not sure.

Q. Well, I asked you whether she handed you a copy of a title report. Do you know whether she had one in her hand, a copy of [889] a title report?

A. No, I did not see one. I would have recognized it because I am familiar with it.

Q. This was a tissue carbon.

A. I think I would have recognized it if it had been in her hand, but she didn't.

Q. Didn't she give you details of a mortgage and an extension, a mortgage and a mortgage foreclosure proceeding?

A. She gave me some details, that's right. I don't recall just exactly what they were.

Q. She couldn't come up—she must have had something in her hand?

A. Either that, or she was looking in her purse, but I didn't see any title report.

Q. You mean you didn't see any that you recognized as such? A. That's right.

Q. When you examined the deed you said it was a regular bargain and sale deed. One of the attorneys in this case has referred to it as a bargain and sale quitclaim deed. Have you ever heard that expression? A. That's right.

Q. Would you say this was a regular bargain and sale deed, as you recall, or bargain and sale quitclaim?

A. I didn't mean to say that. I told her it was a

(Testimony of Kenneth Abraham.)

type of bargain and sale quitclaim deed as you have suggested. In [890] other words, I pointed out to her it was not quite the form of bargain and sale deed, and I was in error when I mentioned that before.

Q. But, at any rate, you felt it was satisfactory?

A. I explained to her what the deed attempted to, purported to convey.

Q. That is the type of deed that the title company accepts; is it not, or have you had occasion to know that?

A. Well, we have used them.

Q. Yes?

A. I have used them in my office, and I know that other attorneys in the community have used them.

Q. You mean you have used them on cases where you have got title insurance?

A. That's right.

The Court: You said that you attempted to explain to her something——

The Witness: What the deed purported.

The Court: What did you tell her?

The Witness: Well, I told her that this deed—now I can remember I have not seen this deed since the day, or since the 11th, but as I recollect generally the deed, as I recall it, was an attempt to convey what right they had in there, if any, as contrasted to a bargain and sale deed in regular form which frequently employs a warranty of having an ownership interest [891] therein but does not warrant it to be free and clear of encumbrances.

The Court: What I am interested in is what

(Testimony of Kenneth Abraham.)

you told Mrs. Parker. Did you tell her that this merely conveyed the interest of the seller in the property without any warranties of the title whatsoever, or did you tell her that this was a conveyance of the property itself?

The Witness: I told her it conveyed the interest of the sellers without any warranties.

Q. (By Mr. Jaureguy): Well, you testified on direct examination that you told her it was a satisfactory deed; that is correct?

A. Well, that's right, but I should have corrected my statement on direct examination. I went ahead and explained to her, in other words, I took the deed, and I explained to her just what the terminology of the deed was, pointing out it was conveying what interest the sellers had in it.

Q. You say that you used those regularly in Hood River?

A. No, we do not use them regularly, but they are used on occasions.

Q. But you did not suggest to her she should send it back and get a different form?

A. Well, I told her what type of deed it was, that it was not warranting title, that it was conveying the interest that these people had in the property.

Q. But you did tell her it was satisfactory?

A. I told her it was satisfactory if she was satisfied with [892] that type of conveyance, and she told me that they were satisfied with it as long as that form was right.

(Testimony of Kenneth Abraham.)

Q. But on direct examination you said it was a regular form of bargain and sale deed?

A. Yes, I am sorry, I was wrong in saying that.

Q. The evening before, the first evening, you asked her about the name, who the grantee was, but didn't she tell you that she and her husband had not decided yet?

A. No, I think she said that she would tell me the next morning.

Q. Well, then, isn't it a fact that the next morning the subject was never broached until after you came back?

A. The subject was broached the next morning in the court house at the time she gave me the check. I asked her right then and there because I was going over to Mr. Parker's office to get the deed, and I knew that Mr. Parker didn't have the name of the grantee because I didn't have it, and I asked her then what the grantee was, and who the grantee was, and she said, "Get the deed, bring it back, and I will tell you."

Q. Well, aren't you getting confused between the conversation that took place the evening before and the conversation that took place on the morning after?

A. No, I do not think so.

Q. Whether or not that the evening before she had said she and her husband had not decided, but she would find out from her [893] husband and let you know?

A. I didn't recollect her saying that the night before.

(Testimony of Kenneth Abraham.)

Q. You do not recollect that. Now this conversation—you said she was there maybe 15 minutes and discussed many things? A. Where?

Q. Oh, I mean up in Vawter Parker's office is what I am talking about.

A. Yes, I think on direct examination I said five to ten minutes, and it could have been 15 minutes.

Q. At that time both you and Vawter Parker knew that she was Mrs. Chet Parker?

A. That is right.

Q. She did not try to conceal that?

A. No, sir.

Q. Now, this statement about Stegmann purchasing the property, don't you think that it might have been something like this, that she said that some little time before that she was at the Stegmann home or the Stegmanns were at her home, and they had a boy, and he was quite a lively little fellow, and that Mr. Stegmann said he thought—and the wife was having a baby, and that he said he thought maybe he had better take the boy and buy an acre up there near Lost Lake and tie him to a tree and maybe he could handle him better, something like that? A. No.

Q. You do not think that was said? [894]

A. No.

Q. Then when Mr. Winans came in and, as I understand it, the check was laid on the table, you got the deed, you got the refund check, and then he said to you that if Stegmann was there he intended to tell him if—that he believed there was some

(Testimony of Kenneth Abraham.)

defect in the title and that they were going to clear, and that they thought it could be cleared better in the Winans' name than in Stegmann's name?

A. Yes, sir.

Q. And that he would be glad to help clear it?

A. Yes, sir.

Q. I am wondering if he might have said something of this kind—I may say I am reading now from the opening statement of Mr. Buell, pages 31 and 2—"After that was done Paul Winans, advised Mr. Abraham that there was some defect in the title to the property; that he would be very glad to assist in whatever way he could in helping the Parkers to perfect the title as against the claim of ownership of the United States or as against claim of ownership by the Government." Could that have been what he said? A. No.

Q. You do not think he said that?

A. It was substantially what he said, except that I am quite sure he didn't use the name Parker.

Q. He didn't use the name Parker? Did he refer to the defect [895] as anything serious or as a technicality, or was something in it?

A. He did not refer to the defect as being serious. He felt that the defect was one which could be corrected.

Q. Did he indicate that it was more technical than real?

A. I would say that he indicated it was more technical than real, yes.

Q. Now, you remember when I was talking to

(Testimony of Kenneth Abraham.)

you not very long ago? I think I visited your office once. I think I have talked to you at least twice on the telephone. A. That is right.

Q. Did you not tell me the last time I talked to you that you had no recollection of telling Mrs. Parker after you got back about this statement that Mr. Winans made? A. That's right, I did.

Q. And also Mrs. Parker visited you sometime, oh, after these difficulties happened, and you told her that you had no recollection of telling me; that is correct?

A. I don't know about Mrs. Parker. I can hardly recollect Mrs. Parker coming into the office again. I think I felt she had. You may recall that I thought so on direct examination. I did tell you when you talked to me on the telephone. I had forgotten. I went back into the various notes that I had made and the notes that other attorneys had taken from me, one of which was taken within six weeks after the transaction, and at that [896] time I was able to clearly recollect that I had told Mrs. Parker about this transaction after I came back from the court house, and on refreshing my memory I recall that I had.

Q. You told me, I think, that when Mr. Vawter Parker went back to Hood River a couple weeks ago and told you that Mrs. Chet Parker had testified that you told her that, that you were astounded?

A. Well, I was surprised, and I could not remember.

(Testimony of Kenneth Abraham.)

Q. Mr. Buell was up to see you, oh, sometime in 1951 and interviewed you on this matter; was he not?

A. Yes, sir.

Q. Would you tell us about when that was?

A. Oh, it was before Christmas, I think.

Q. Would you say it might have been the first few days of October, might have been that early?

A. It could have been in October.

Q. At that time did he tell you that the Title and Trust Company were suspicious that the Winans and the Parkers had conspired to put one over on the Title Company?

A. I would not say for sure that Mr. Buell had said it, but I think it, that that suggestion was made in the general conversation either in my office or on the street corner later.

Q. That is, in a conversation between you and Mr. Buell, you mean?

A. Between myself and Mr. Buell. There was someone else with [897] Mr. Buell. I cannot recall who it was. It might have been Mr. Altstadt.

Q. That is, it was somebody connected with the Title and Trust Company, as far as you know?

A. I think there was a couple people with him, oh, yes, Mr. Miller, the local manager, was with Mr. Buell at that time, the local manager of the Title Insurance Company.

Q. One of them, either Mr. Buell or somebody else connected with the Title and Trust said that they believed that the Winans and the Parkers had conspired to put this over on the title company.

(Testimony of Kenneth Abraham.)

A. I would not say for sure, Mr. Jaureguy, that they said they believed, but they were considering it as an element in the case to investigate.

Q. I suppose that Mr. Buell told you that Mr. Francis Marsh who was then the attorney for Mr. Parker had said it was perfectly all right for him to interview you? A. I do not recollect.

Mr. Jaureguy: That will be all.

The Court: Mr. Ryan?

Mr. Ryan: No questions.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Abraham, do you recall telling Mrs. Parker after you [898] had brought the deed to her and had filed in the name that, something to this effect, that there was a technicality in the title according to Mr. Winans, but that you considered it a small thing and not to pay any attention to it?

A. I most assuredly did not because I was not aware of what the technicality was other than a very slight description on it, and I was not going to pass an opinion on that title under the circumstances of which by that time I was more than unhappy about.

Q. You gave her no view of your own?

A. I gave absolutely no——

Q. As to the validity of this defect?

A. I absolutely did not. From the time that I discovered the \$95,000 check I was very cautious about this thing.

(Testimony of Kenneth Abraham.)

Mr. Krause: That is all. Thank you.

The Court: Mr. Buell?

Mr. Buell: If the Court please, we have no further questions, but at this time, since counsel has taken the liberty of examining me in my opening statement, I would like to most assuredly assure the Court that I did not intend to represent to the Court that we were going to prove what in this case Mr. Jaureguy read. I think the Court understands that.

Mr. Jaureguy: I quoted you correctly, I mean.

Mr. Strayer: I want to say in that regard I caught the error when it was made and tried to tell Mr. Buell about it, and he didn't understand me when he was making the statement. [899]

The Court: Very well, proceed, Mr. Jaureguy.

Cross-Examination

By Mr. Jaureguy:

Q. I think that you told me once that you and Mr. Vawter Parker, when the story came out in the newspapers, got together and discussed the matter, you said, to refresh your respective memories as to what happened over in his office?

A. Oh, Mr. Parker and I have had discussions over this matter, not entirely lengthy at all.

Q. No, I know, but for the purpose of comparing your notes as to what happened?

A. Oh, we have compared some notes. I don't think we ever went into it in detail. We rode down

(Testimony of Kenneth Abraham.)

in an automobile from Hood River today and didn't discuss our testimony once in this entire case.

Q. I was not referring to that, and I certainly am not criticizing anybody, but I understood you to say that shortly after this event happened you and Mr. Vawter Parker got together and discussed your respective recollections of what did happen so that you could decide just——

A. We did have discussions about the matter, that's right, Mr. Jaureguy.

Mr. Jaureguy: Yes, that is all.

Examination by the Court

Q. Would you think that a man who told you that it was necessary [900] to have Congressional action to clear up a defect was representing that the defect was merely technical?

A. Well, I think that in saying "technical" I was using his own term. I did not have any opinion at all with regard to the nature of the defect or whether it was substantial or not substantial.

Q. Did Mr. Winans tell you that after you had paid the money and gotten the deed?

A. To the best of my recollection, it is my recollection that he did. I have discussed that point with Mr. Parker in trying to determine whether the conversation took place after the deed and money was passed, and it is mine that it did, that the conversation occurred after I had the deed in my hands. I know that I was standing preparatory to leaving the room.

(Testimony of Kenneth Abraham.)

Q. When you found out from the representative of the grantor that there was a defect in the title did you not get concerned; did not that concern you?

A. It concerned me considerably. That is the reason I brought it to the attention of Mrs. Parker.

Q. Did you ask Mr. Vawter Parker not to disburse the funds until you had had an opportunity to talk to Mrs. Parker? A. I did not.

The Court: That is all. [901]

Cross-Examination

By Mr. Jaureguy:

Q. As a matter of fact, your check was deposited in the bank that very day, wasn't it?

A. I have not any way of knowing. You see, I was quite sure that there was title insurance involved in this thing because they had given me a certain date which, to check back on the record, and giving that indicated to me that they had had title insurance.

Q. Are you quite sure that she didn't actually tell you they had title insurance?

A. I am quite sure she didn't actually tell me they had title insurance.

Q. From what she did tell you, you were quite satisfied that they did?

A. Yes, I might add one thing. I didn't say in my conversation with Mr. Parker when I went to Mr. Parker's office from the court house with that check, I asked Mr. Parker, as I recollect, whether

(Testimony of Kenneth Abraham.)

these people had title insurance. He said he didn't know either, but he did know that they had had the property surveyed and that they were not going into this purchase blind.

Q. Did you get the impression from that that he had the opinion that they had title insurance?

A. I got the impression from that that he had the opinion that they might have title insurance, yes. [902]

Q. That is all.

The Court: Any further questions of Mr. Abraham? That is all.

(Witness excused.) [903]

VAWTER PARKER

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Vawter Parker, and you also are a practicing attorney at law with offices in Hood River, Oregon; is that correct, sir?

A. That is right.

Q. How long have you been practicing in Hood River, Mr. Parker, approximately?

A. Since January, 1946.

Q. In connection with this sale of that Winans' Lost Lake property, you represented Mr. Paul Winans, right?

A. Yes.

(Testimony of Vawter Parker.)

Q. Do you recall approximately when it was that Mr. Winans first consulted you relative to this proposed sale?

A. Sometime after the middle of August, I think about the 17th or 18th of August, 1951.

Q. What did Mr. Winans tell you on that first occasion that he wanted you to do in connection with this sale?

Mr. Jaureguy. I want to object to any of this testimony insofar as it might be offered as against the Parkers.

The Court: That is right, this is admissions against interest against the Winans. [904]

Mr. Ryan: Object to it on the same basis as to Stegmann, I assume.

The Court: Yes.

The Witness: Mr. Winans called and stated that he wanted to sell some land which the Winans had up around Lost Lake and wanted me to draw a deed for them, and after that there was some discussion concerning about who would sign the deed, and I looked at the title, did some checking on the title and also at one time there was discussion concerning about income tax on the sale, and I suggested to him that he contact his accountant and take that problem up with him, and afterwards he did bring his accountant into the office and we discussed the matter with the accountant one day between the first time I saw him and the time when I first met Mr. Stegmann.

Q. Now, when was it first brought to your at-

(Testimony of Vawter Parker.)

tention, Mr. Parker, that there was some question as to the title of Ethel Winans to the 40-acre tract that was covered in this transaction?

A. Sometime between the first time I saw Mr. Winans about this and the time that Mr. Stegmann came in. The exact date I can't remember.

Q. Can you definitely state whether or not you knew of this possible title question before you first met Mr. Stegmann? A. Yes.

Q. Do you recall when the date was that you first met Mr. Stegmann? [905]

A. It was the Saturday—it was a Saturday morning. I believe the date was September 8th. I would have to check that on the calendar, but it was—my meetings with Stegmann were on a Saturday and on a Monday following that.

Q. Were those the only two occasions that you ever saw him?

A. Only two occasions during that year until I happened to see him here in Court about a week ago.

Q. You recognized Mr. Stegmann in Court then?

A. Oh, yes.

Q. All right, then, bringing this up to this September 8th meeting, was that a pre-arranged meeting by appointment, or was it one where they just happened to drop in your office on Saturday, the 8th, or do you recall?

A. I don't recall, but I believe that Paul had told me, Paul Winans had told me or called me and asked to have an appointment that morning.

(Testimony of Vawter Parker.)

Q. Then when—who arrived that morning on on September 8th?

A. Paul Winans and Walter Stegmann and a man by the name of Haines or Hayes. I believe he was a surveyor.

Q. What took place at that meeting?

A. They came into the office, and there was discussion concerning the description to be used, the land to be conveyed and description used, which was particularly concerning an excepted portion which was to be saved out of that portion which was near to the lake, and also at that time there was some discussion, [906] first discussion in which I was around in which—as to the title of this, part of this land.

Q. How long did that first meeting take place?

A. Well, it started, as I remember it, it started in the morning and we were having a little trouble with a survey. I believe that they went back over to the City Hall. They had made arrangements at the City Hall to use the Engineer's office at the City Hall to plot out this excepted portion, and I think that particularly Mr. Haines and Mr. Stegmann and, I think Mr. Winans went back over to the City Hall because I was busy that morning and I know I went over to the City Hall some time that day, talked to one of them for a few minutes, and then they came back over to the office, and we came back Saturday afternoon.

Q. Can you recall or state what time during the

(Testimony of Vawter Parker.)

day you first started that actual process of preparing a draft of the deed?

A. It must not have been until that afternoon because I think they were still working over there at the Court House, I mean at the City Hall, on a description. They may have got it back before noon, but it seems to me it was more that afternoon.

The Court: Is the City Hall open on Saturday?

The Witness: The City Hall is open on Saturday morning, sir, and on that afternoon we made arrangements, I believe, for them to use the office there of the City Engineer.

The Court: Were you looking at maps of this particular area? [907]

The Witness: No, they had a map, I believe, they had a map, and they had to come around the edge of the lake, kind of a dogleg around the edge of the lake on the various meanders to bring it down to a point to where they were going to take off this excepted portion.

The Court: Well, would the City have a map of this area?

The Witness: No, they did not have, sir, but they have the facilities there where they could on the map, where they could plot it out. I think that is what they were doing. As I remember, I was over there, and at that time they had their large map out on the table there in the City Engineer's Office. I don't know whether the City Engineer had a map. I doubt if he would have of Lost Lake.

Mr. Buell: Was there any discussion during the

(Testimony of Vawter Parker.)

course of that, of the day of the 8th, as to the form of the deed aside from the question you were having about a description? Was there any discussion of the form of the deed as to the kind of a deed or type of deed that it was to be?

A. I think at all times it was discussed it was only to be a deed conveying the interest of the Winans in that property. It would not be a warranty deed. It would be a bargain and sale deed of their interest.

The Court: Tell us what you told him, though, about the title. You mentioned that earlier. What did you tell Mr. Stegmann about the title that [908] day?

The Witness: What I told Mr. Stegmann?

The Court: Yes.

The Witness: I don't know whether I told him except in connection with this deed why they could not give a warranty deed, that there was—this defect about it. Mr. Winans discussed it more with him than I did as to what the nature of this defect of title of the Winans was anyhow. The only discussion that I had with Mr. Stegmann would have been as to why we were giving this kind of a deed.

The Court: What did you tell him?

The Witness: Well, they could only sell what interest the Winans had in the property.

The Court: Did you have any discussion with reference to the apparent defect in the 40-acre tract?

The Witness: In the back 40-acre tract, yes, I

(Testimony of Vawter Parker.)

can't remember the exact wording, but we discussed that there was a defect in the back.

The Court: Were you present at the time that Mr. Winans was talking to Mr. Stegmann concerning the nature of the defect on the back forty?

The Witness: Not altogether, yes, well, they were in there, and I was working on it, and there was discussion between them as to the exact defects on the back forty.

The Court: Did you hear it?

The Witness: Yes, I did, sir. [909]

The Court: Do you recall what Mr. Winans said to Mr. Stegmann?

The Witness: The exact words I don't remember, but it was because that the land had not been cleared by the Federal Government although it was in a school section. It was not cleared by the Federal Government.

The Court: What did you tell Mr. Stegmann concerning the nature of the deed which the Winans would execute, Mrs. Winans would execute?

The Witness: Well, she could only execute a deed conveying what interest she had in the property.

The Court: Did you tell him that this was merely a quit claim deed or a bargain and sale deed?

The Witness: I don't believe I used the word "quit claim" because there is a slight difference in my mind as to what a quit claim deed is, but I did tell him it was a bargain and sale deed of what her interests were in the property.

(Testimony of Vawter Parker.)

The Court: Did you also tell him that the reason you were giving him that type of deed was that there was a defect in the back forty in the title?

The Witness: Because of this defect that he and Mr. Winans discussed was the reason for giving him that type of deed.

The Court: How long did this conversation with reference to the defect in the title last, or how many conversations did you have on that day with him concerning that? [910]

A. Well, there was some discussion on Saturday concerning this defect in title although the main portion of time on Saturday was taken up with a description around the lake and drawing the description and this excepted portion. It was on Saturday it was discussed in there first, and then it was discussed again on Monday.

The Court: I am going to let Mr. Buell take over the Monday discussion.

Q. (By Mr. Buell): I want to cover a couple other things on Saturday, your Honor.

Was there any discussion Saturday, Mr. Parker, as to whose name was going to be inserted as the grantee in the deed?

Mr. Jaureguy: I want to still renew the objection as far as the Parkers are concerned that it is not admissible.

The Court: It is understood that all these conversations that took place outside the presence of Stegmann or Parker or either of them are only binding on the defendant Winans.

(Testimony of Vawter Parker.)

Mr. Buell: Well, if it please the Court, I am referring to discussions of attorney Parker with Mr. Stegmann.

The Court: Well, then, of course it binds Mr. Stegmann, and it would bind Winans also because there is no question that Mr. Vawter Parker was representing the Winans.

Mr. Buell: I think it would also bind the Winans in the event——

The Court: If you establish that Stegmann was an agent of [911] Parker, obviously it binds the Parkers.

Mr. Jaureguy: Then that causes me to make the objection that they have not established that, and, therefore, it is not yet admissible.

The Court: It is certainly admissible against the Winans.

Mr. Jaureguy: Oh, yes, yes, I know that is correct. I beg your Honor's pardon. I meant it won't against the Parkers.

The Court: Go ahead.

Mr. Buell: Was there any discussion on Saturday, September 8th, as to whose name was to be inserted as the grantee in the deed?

Mr. Ryan: Object to that to the extent that it should be shown that Mr. Stegmann was present or not.

Mr. Buell: In Mr. Stegmann's presence.

The Witness: The exact day, whether it was Saturday or Monday that the discussion came up concerning the name that I asked there that day,

(Testimony of Vawter Parker.)

that is, for the first time as to whose name would be in there, I believe, was Saturday, but it may have been Monday that Mr. Stegmann said that he might take it in his son's name and to leave the name blank, and then either on Saturday or Monday it got down to the point where we had to know whether it was going to be plural or singular or whether a man or woman, and I asked him that. He said to still leave it blank, but it would be—I believe he said at that time it would be a man, and maybe that was the time that he stated he might take it in [912] his boy's name.

Q. Did you prepare any copies of the deed which were turned over to Mr. Stegmann which contained the name or part of the name of any person in the grantee's space? A. Yes, I think I did.

Q. What copy was that, and what name was inserted in it?

Mr. Jaureguay: Object to that, and an additional objection, it is not the best evidence. Same objection I made before and this in addition.

The Court: Is that document in existence, or do you want to show it is unavailable?

Mr. Buell: I will ask him about that.

Do you know where that document is with the name of a grantee marked in it that you just referred to?

A. Well, at one time I did have it. I don't know whether it is still in the office or not. It is just a yellow tissue copy that I had.

(Testimony of Vawter Parker.)

Q. Do you have a copy of it, Mr. Lindsay?

Mr. Lindsay: Yes.

Mr. Buell: Is it marked?

Mr. Lindsay: Is it marked? No, it is not here. It is down to the office.

The Court: Well, objection sustained.

Mr. Jaureguy: I will withdraw the objection if the two counsel will agree that it will be brought up here later. [913]

Mr. Buell: That is perfectly agreeable.

The Court: Do you have any objection to offering it?

Mr. Lindsay: None whatsoever, your Honor.

Mr. Jaureguy: I mean I withdraw this additional objection.

Mr. Buell: That is not the best evidence?

Mr. Jaureguy: That is right.

Q. (By Mr. Buell): Whose name or what name was in the copy of the deed that you prepared?

A. Stegmann.

Q. His full name or——

A. No, no, it was blank, and then it said “Stegmann” in it.

Q. Do you recall when that copy was prepared?

A. Well, I think that copy was prepared on Saturday.

Q. Was that given to Mr. Stegmann?

A. Well, there were about five or six copies of this deed prepared over those two days, and whether he received a copy of that deed I don't know because from time to time—at least he saw it, I will

(Testimony of Vawter Parker.)

say that. I am pretty sure he saw it because he would take it and examine it, and I presume was checking it with somebody. That is just presumption on my own part.

Q. Then, still referring to Saturday, the 8th, do you recall about what time of the day your meetings broke up?

A. Well, no, but they lasted pretty much far along Saturday afternoon, as I remember it.

Q. Did Mr. Stegmann leave before Mr. Winans did on Saturday; [914] do you remember?

A. I couldn't say who left first. I kind of imagine that Mr. Stegmann did because sometime along on Saturday afternoon, after we had had some—there had been some more discussion concerning this deed because we were changing the description and the wording in the deed, and the question came up about the payment, and I found out that Mr. Stegmann was just going to give us his check for \$95,000, I think it was, or whatever the amount was still due.

Q. Who said that?

A. Well, it was either Mr. Winans or Mr. Stegmann. At least they were both present, and they both agreed that that was going to happen, and Mr. Stegmann was going to give a check, and I objected to giving that check, just a straight out check. He was just going to give a check on the bank of McMinnville, I believe.

Q. Was Mr. Haines present at all of the conver-

(Testimony of Vawter Parker.)

sations that were held in your presence on Saturday?

A. Mr. Haines, the surveyor?

A. The surveyor, yes.

A. I don't believe he was because, if I remember it, he went over to the City Engineer's office and he worked over there part of the time, so he may not have been in our office all the time when Mr. Stegmann and Mr. Winans were present.

Q. But he was there part of the time?

A. He was there part of the time. [915]

Q. Then on Monday, what happened on that day? When did you first get together and who was present?

A. On Monday it was just Mr. Stegmann and Mr. Winans. Mr. Haines, I don't believe I saw him again.

Q. Did any additional difficulties develop on Monday?

A. The time element was a little bothering, but I think on Monday was the time that the matter of additional lands to be excepted came up. Now, I am not too sure of the exact time of that, but I am pretty sure that occupied quite a bit of the share of our time on Monday.

Q. Were both Mr. Stegmann and Mr. Winans present when that was being discussed?

A. Oh, yes.

Q. What was the discussion about the additional reserved area?

A. Well, they wanted to take out some more lands to be reserved for the Winans, and I can't

(Testimony of Vawter Parker.)

remember how it looked on the plat as they worked on it, but, anyway, there was more land which was to come out, and that also affected the amount of the price which was to be paid.

Q. Was there any agreement reached as to what the price was to be paid for the additional reserved acreage?

A. Well, it was determined between Mr. Winans and Mr. Stegmann. They computed that on—worked out some basis for computing the additional price.

Q. Do you remember what the basis was or how it was arrived at? [916]

A. Well, it was with relation to the value on the, proportion on the lake frontage there because it was all on the lake frontage that they were going to except the piece of land out.

Q. Had there been any discussion between Mr. Stegmann and Mr. Winans in your presence as to a separate valuation for the 25-acre tract as distinguished from the back forty?

A. Prior to that time I don't remember whether they discussed it, but at that time they used different valuations to determine the valuation on this particular extra frontage that was going to be retained by the Winans.

Q. Do you recall what those valuations were?

A. The exact figures, no, I do not.

Q. To refresh your recollection, it is admitted by all the parties here that the amount of the refund for the additional reserved area was \$4,750.

(Testimony of Vawter Parker.)

A. Oh, yes, I recollect that. I mean, I know that was the amount of it.

Q. But you say you cannot recall exactly what the formula was that resulted in the \$4,750?

A. They worked it out because that day I was rather busy, and they worked in my office there most of the time.

The Court: Who is "they"?

The Witness: Mr. Winans and Mr. Stegmann, and, as I remember, because I did not make it out for them, they worked it out, it was based on the additional land which was being taken on the [917] lake frontage and a value based on the lake frontage land.

Q. Now, was there any additional difficulties that arose as to the description of this reserved acreage on Monday? Would it help you to see a copy of the deed to refresh your memory in that connection?

A. Well, as I remember it, the description of the plat as I saw the plat rather than as I saw the description in the deed, but the original description from my memory started at the—the lot next to the lake is Lot No. 1; is that right, or is that Lot No. 2?

Mr. Buell: Lot No. 1.

The Witness: All right, down in the southeast corner, I believe it would be, if I see a map, where the original description came out, and then it moved over to a place on the shore of the lake, and when they changed it they moved farther north along this. I believe it would be the west line of Lot 1.

(Testimony of Vawter Parker.)

I think there is a little creek runs down there, and it had some relation to this creek that comes down there, that they moved over to make this new description that involved the change in the description and the additional area which Winans was going to retain. I do not have a map before me, but I can point it out to you on the map.

Q. Well, then, on Monday was there any discussion about calling in outside assistance or having somebody else check the description that you were preparing to see whether or not it was [918] satisfactory?

A. Well, we were having quite a bit of trouble going around this lake, and we had this on Saturday also to follow around the edge, and I believe they said there had been a surveyor up there, that they had surveyed around this edge, but they didn't know, were not always sure where the edge was at, and the fact that the dam which was placed in the creek that drains Lost Lake had caused the water to raise slightly, and the boundary might have been changed, so I suggested that I go down to the Title and Trust Company and ask them if they had a plat. They have some photostatic copies of some of the early surveys there, and I thought that would be a simple way for us to reach this point, and Mr. Stegmann was at that time objecting to my going down there very strenuously. He didn't want me to go down to the Title and Trust Company office.

Q. Can you recall his words he used at all in that connection?

(Testimony of Vawter Parker.)

A. The words I can't remember. I cannot remember what words he used to me, but he didn't want me to go down to the Title and Trust Company to check the title or to talk to them about it.

Q. Did he say, did he give you any reason for it?

A. No, I can't remember that he gave any reason. He just objected very strenuously to my going down there.

The Court: Going down to check the title or the description?

The Witness: Not to check the title, but to check this description. I wanted to get this plat that the Title and Trust [919] had.

Q. Then did anything else take place on Monday, other than the two incidents that you have related about going to the Title and Trust Company and working out the price of the reserved area?

A. Well, I think it was on Monday that I first began to notice that when we would work out a description, why, Mr. Stegmann would disappear with it and either, for some reason or other, he would find some reason, why, then he would take a copy of the description and disappear, and then he would come back within a short time, and we would work out—sometimes we would change the description; sometimes we didn't make any particular change as far as I could see.

Q. Was there any discussion on Monday about the defect in the title and about the kind of deed that the, that was to be given by the Winans?

(Testimony of Vawter Parker.)

A. Well, it was on Monday, I am pretty sure it was Monday afternoon or sometime Monday, that Mr. Winans brought in a little slip of paper on which he had a statement which he wanted Mr. Stegmann to sign, that he acknowledged that the United States had some claim in the premises.

The Court: On what day?

The Witness: I am pretty sure that was on Monday that he had that. It was a little typed-up slip of paper that Mr. Winans brought in. It might have been Saturday, but it seems to me it was Monday that Mr. Winans brought that slip of paper, and he [920] tendered it to Mr. Stegmann and wanted him to sign it.

The Court: Had you read the slip of paper before it was handed to Mr. Stegmann?

The Witness: As I remember it, at the time that I first saw the slip of paper was when they were both in there. I may have seen it before, but it isn't—I don't remember, I didn't draw it nor it was not at my suggestion.

Q. (By Mr. Buell): Do you know where that document is? A. No.

The Court: Isn't there one here?

Mr. Lindsay: Which one is that? That is that agreement?

Mr. Buell: Yes.

Mr. Lindsay: Yes.

Mr. Buell: Has that been marked?

Mr. Lindsay: That is 311.

Mr. Buell: Number 311,

(Testimony of Vawter Parker.)

Q. The crier has just handed you what has been marked for identification as Third-Party Defendant's Exhibit 311. Can you identify that, Mr. Parker?

A. The wording of it I recognize, yes. Whether this was the exact piece of paper I don't know.

Q. May it be said that you can state for sure that you read it yourself prior to the time it was handed to Mr. Stegmann by Mr. Winans?

A. No, I couldn't say for sure whether I had read it before or [921] not.

Q. What did Mr. Stegmann say when Mr. Winans asked him to sign that agreement?

A. Well, he refused to.

Q. I omitted something there. You said you could not identify that as an exact piece of paper, but that you recognized the language in that exhibit. Is that the language that was in the document that was tendered to Mr. Stegmann by Mr. Winans?

A. Yes, this is the same general text that was in that document.

Mr. Ryan: Object to this line of testimony at this point. I don't believe it has been established that he said he was present when this happened.

The Court: He testified that he was there with Stegmann and Winans at the time this discussion took place. I think it has been established, certainly testified to by Mr. Winans, that he tendered this exhibit to Mr. Stegmann for signature. Go ahead.

Q. (By Mr. Buell): What did Mr. Stegmann say to it when——

(Testimony of Vawter Parker.)

A. I don't remember his words, but he refused to sign it.

Q. Was your advice sought by either party as to whether or not it should be signed?

A. Well, not by Mr. Stegmann, but there was some discussion with Mr. Winans right there in Mr. Stegmann's presence.

Q. What did you tell Mr. Winans with regard to the necessity of having that document signed?

A. Well, I went to him with this deed which we were giving which [922] was—in the meantime, the first deed was a—the first deed that we discussed, I think the first time I was in there, was the deed which was a strictly bargain and sale deed, and sometime in this time we changed from a bargain and sale deed, which would be bargain and sale of two lots, to a bargain and sale of all of her interest in the two lots, and I pointed out to Mr. Winans in Mr. Stegmann's presence, being as the deed was changed this way, that we had changed the wording of the deed; that if he didn't sign that we were not warranting the title anyhow under the deed that we were giving.

Q. That is, would not be necessary for him to sign that Exhibit 311?

A. Well, it was not an absolute necessity because the deed was worded in such a way that it only conveyed what interest she did have.

Q. Did you ever follow Mr. Stegmann when he left your office taking a copy of the deed with him at any time during this transaction?

(Testimony of Vawter Parker.)

A. I don't know as I followed him, but I went downstairs one time when he went down, and I think I saw him stop at a car down the street down there.

Q. Was anybody in the car?

A. There was somebody in the car, yes.

Q. Did you observe whether it was a man or a woman?

A. Just seems to me it was a woman, but I would not tell you [923] for sure.

Q. Could you state whether that was on Saturday or Monday?

A. I can't remember which day it was on. I am a little bit inclined to think—well, I thought it might have been Monday but I couldn't be sure.

Q. Was it the last time that you had occasion to see Mr. Stegmann, or was it earlier in the day, if it did happen to be on Monday?

A. I think—I am just telling you my own memory now—that I saw Mr. Stegmann again that day that it happened.

Q. Do you recall when it was that the final draft of the deed was satisfactory as to form to Mr. Stegmann was prepared on Monday?

A. It was prepared Monday afternoon, late.

Q. How late in the afternoon?

A. Offhand, I would say around four o'clock.

Q. What did Mr. Stegmann say, if you can remember, the last time or as he left the last time Monday?

A. I didn't remember, didn't know it was going

(Testimony of Vawter Parker.)

to be the last time I would see him. He just said he was taking this deed. He wanted a copy of the deed. He wanted to take it out and check it, and he left, and I think that is the last time I saw him that time.

Q. What happened next?

A. I don't know whether Miss Winans came in to sign the deed [924] then, or whether I had a telephone call from Mr. Abraham, one or the other—I can't remember.

Q. Could you give us any idea as to how long a time expired between the time Mr. Stegmann last left your office with the copy of the deed, and the time that Mr. Abraham called?

A. It was a very short time. I don't remember.

Q. Then you made your arrangements with Mr. Abraham to close the sale the following—

A. Mr. Abraham called me, I believe he called me, and it was getting late and we arranged that we would close the sale the next morning.

Q. Then when Mr. Abraham arrived the next morning, he has testified that there was some delay, and I wonder if you could explain what the reason was for the delay in closing the transaction after he arrived at your office?

A. Well, I believe that they were supposed to close it around nine o'clock in the morning, the next morning, and Mr. Winans didn't arrive. I think the first person who arrived that morning was Mr. Abraham, and Mr. Abraham came into the office and we had some general conversation, including the

(Testimony of Vawter Parker.)

amount of money which was to be involved and particularly the amount of the refund which I was—or which was to be paid back to the purchaser.

Q. Did you know what the refund was at that time? A. I think I did.

Q. What was the necessity then, if any, for waiting for Paul [925]Winans?

A. Well, I wanted to be sure as to the amount of the refund because I just heard it discussed there that night before. Another thing is, somebody was going to want some assurances of making this refund that we would be properly reimbursed for the amount of money we were going to put out on it.

Q. Did Mrs. Parker come into your office sometime?

A. Yes, after Mr. Abraham was there for some little time, why, Mrs. Parker came in. I mean, it turned out to be Mrs. Parker. Either she introduced herself or was introduced as Mrs. Parker.

Q. Mrs. Chet Parker. Was that the first time that you had ever met her?

A. Yes, that was the first time that I had ever met her.

Q. Was it the first time that you had ever heard of her by name?

A. I was introduced to her as Mrs. Parker. I didn't even know she was Mrs. Chet Parker, and I don't think there was any discussion as to her name. She either said she was Mrs. Chet Parker or Mr. Abraham introduced her as Mrs. Chet Parker, one or the other.

(Testimony of Vawter Parker.)

Q. While she was there, what did she say that you recall?

A. There was some general discussion about this—I think we mentioned this piece of property that she said—at least I got the impression that she was, seemed interested in this property. In fact, I got the impression before she left there that, some way, that she was at least advancing the money or had something to do [926] with the money which was coming on this property.

Q. What caused you to get that impression?

A. Well, whether it was because Mr. Abraham had informed me that that was the lady from whom he had received the check or not, I don't know, but because she was interested in having Mr. Abraham check this deed, I felt that she was interested in the property, and I was under the impression that she was backing Stegmann. I don't know where I got that impression.

Q. Was anything said as to who was purchasing the property while she was there? Did she make any statement as to who was purchasing the property?

A. Whether she made a direct statement that Stegmann was purchasing the property, I don't know. I had an impression that Stegmann was still purchasing the property but that she was backing him or represented someone who was backing him.

Q. When was the first time that you learned that

(Testimony of Vawter Parker.)

Chet Parker was the person whose name had been inserted as the grantee in this deed?

A. I believe it was when Kenneth Abraham called me and told me whose name was inserted in the deed. Then I went over and checked the Court House, checked it myself.

Q. Now, had you ever heard the name of Chet L. Parker in connection with the purchase of the Winan's property at any time prior to the time that Mr. Abraham called you after the deed had been delivered and the time you just mentioned? [927]

A. Well, I believe that during the discussion between Mr. Winans and Mr. Stegmann, that I may have heard that Mr. Parker had been up there with them, and I think that Mr. Winans had once discussed with me, certainly incidental to this, some financing that Mr. Parker or some friend of his was going to do for him, but the name Chet—in fact, I don't know whether I connected Mrs. Parker when she was introduced was with Chet L. Parker that they had mentioned before.

Q. When you had heard of Mr. Parker as having been up on the property with Mr. Winans and Mr. Stegmann, was his name mentioned to you as a person having an interest in the purchase of the property?

A. No, I had heard him mentioned as a man who had made this survey work up there on this survey with Mr. Stegmann and Mr. Winans.

Mr. Buell: We have no more questions. Thank you. I would like to offer Exhibit 311.

(Testimony of Vawter Parker.)

The Court: I think it has been admitted already.

Mr. Jaureguy: We make an objection. It is not in any way binding upon the Parkers.

The Court: It may be admitted.

(Document, Memorandum of Agreement between Paul Winans, agent and trustee, and Walter Stegmann, buyer, heretofore identified as Defendants' Exhibit 311, was received in evidence.) [928]

The Court: Of course, so far as the Parkers are concerned, it would only be binding on them in the event that we find agency. Mr. Jaureguy, go ahead.

Cross-Examination

By Mr. Jaureguy:

Q. You say you had the impression that Mrs. Parker was interested in the property?

A. As backing Mr. Stegmann.

Q. Why would you say that she was backing Mr. Stegmann, rather than——

A. Buying it outright?

Q. Some other interest in which each of them might have?

A. Well, I had understood some way that Mrs.—I mean, Mr. Stegmann and this lady who was evidently, who was Mrs. Parker, introduced as Mrs. Parker when I met her, were the ones who—I mean Stegmann was purchasing the property, but she was some way checking him on the description or on the title.

(Testimony of Vawter Parker.)

Q. Who gave you that impression? Was that something that Mr. Winans told you?

A. No, no, because—I don't know as I ever discussed it with Mr. Winans until after Mrs. Parker left, whether there was ever even such a person as Mrs. Parker.

Q. You say you don't know whether you did?

A. I doubt if I did because I didn't know there was a Mrs. Parker until that, it must have been Tuesday morning. [929]

Q. Do you remember Winans making a statement to Mr. Abraham about some defect?

A. Yes, I did.

Q. A technical defect.

A. About defects on the title?

Q. Yes. A. Yes, I do.

Q. Is the testimony of Mr. Abraham the way you recall it, too?

A. As I remember it, that morning while we were there, I don't remember whether Mr. Abraham had picked up the deed off the desk or not, but the check, I am pretty sure, was still laying on the desk; was when Paul Winans started to tell him about the, that there was a defect with that which he thought the Winans family were in a better position to get corrected than any stranger.

Q. Did he refer to it as technical?

A. I don't know whether he referred to it as technical or not, but one of us made the, made some sort of a statement about a Congressional act or an act of Congress or something to straighten it out.

(Testimony of Vawter Parker.)

Q. Well, I take it that you do not need to be told that a Congressional act of Congress may clear up defects that are technical and also defects that are not technical? A. That is right.

Q. So that fact would not convince you it was technical, that fact alone, I take it, but do you recall whether Mr. Winans [930] referred to it as a defect which he regarded as technical?

A. I do not know whether he used the word "technical," no.

Q. You say you don't recall whether Mr. Parker had the deed in his pocket or——

A. You mean Mr. Abraham?

Q. Whether Mr. Abraham had the deed in his pocket or in his hand at the time?

A. No, I was not at the discussion which occurred that morning. Whether he had picked up the deed or not, I couldn't tell you.

Q. That was after Mrs. Parker had left?

A. Yes, Mrs. Parker left before Mr. Winans came into the office.

Q. Did she mention the fact that her husband and Mr. Winans had had quite a hot argument about a week before? A. No.

Q. Ten days before? A. No.

Q. She didn't mention that. Now, you and Kenneth Abraham, as I understand it, shortly after this happened or shortly after the story came out in the newspaper, you kind of compared notes to refresh your memories as to what happened at this meeting?

(Testimony of Vawter Parker.)

A. I don't know whether we required notes, but we certainly talked it over.

Q. Well, the idea was you wanted to get the facts straight?

A. Well, we were trying—the newspaper story we were trying to straighten out what we knew about what happened. [931]

Q. Did Mr. Buell or anybody from the Title and Trust Company interview you sometime thereafter? A. Yes, they did.

Q. Can you tell us when that was?

A. Well, I would say it was a month or so, maybe more, after the story came out in the newspapers. I can't remember the exact date of it.

Q. Well, the story came out in the newspapers just two or three days after that deed was recorded?

A. I think the week end in the Hood River papers.

Q. You would say it was a month, more or less, after that?

A. At least a month, I would think so.

Q. At that time, who was it that interviewed you, Mr. Buell or somebody else?

A. Well, Mr. Buell was up there. Somebody was with him, but I think Mr. Buell did most of the talking.

Q. You told him your whole story of everything that had happened?

A. I think I told him what I knew about it.

Q. That is what I mean.

A. Whether I raised any objection as to whether

(Testimony of Vawter Parker.)

he was an adverse party to Mr. Winans, I suppose I might have, but so far as——

Q. You have told us today what you know of it, and you had told him then what you knew about it, and as far as you can recollect you had told him then what you have told us today? [932]

A. I think so. I do not know what notes he took on that, but he talked to me there that day about it.

Q. I am wondering why you didn't make this a warranty deed as to Lot 1 and a quit claim as to Lot 2. Did you consider that at all?

A. I think on the first day that there might have been some discussion about that, but by the time they were ready to take it, we went ahead and used only the one deed because at one time we had one deed, and I think that was on the Saturday, in which we were using a wording which is common in the ordinary bargain and sale deed.

Q. Bargain and sell?

A. "Bargain, sell and convey the following described real property." I think that was the original deed which we started off with Saturday morning or sometime Saturday, but by the time the thing got worked around and after some more of this discussion there, we changed that wording to "bargain, sell, and convey all of Ethel Winan's right, title, and interest in the property."

Q. But in the ordinary case in this kind of a transaction, wouldn't you ordinarily make a warranty deed subject to the rights of the Government?

A. Well, sometimes. I mean, I have.

(Testimony of Vawter Parker.)

Q. Did you know when you executed the deed whether it was the rights of the United States Government or a claim by the United States Government that created the defect? [933]

A. That was the defect, yes.

Q. So wouldn't you have thought that, aside from that claim, as far as anything Winans told you, he could warrant a title; could he not? I mean, if you except the claim of the United States Government?

A. Yes.

Q. Miss Winans could warrant her title?

A. I think she had—I was informed she had a good title from the State but not from the United States Government.

Q. That is right, the only difference in the title was a claim of the United States Government?

A. That is right; I think it was the only defect.

Q. Don't you think it would have been more appropriate to the circumstances to have had a warranty deed subject, however, to the rights of the United States Government in the 40 acres?

A. Might have been; however, we didn't use it at that time.

Q. Yes, I understand, but was the fact you didn't use it—now, Mr. Winans, I think, might have suggested this. I wonder if he suggested to you that he got a bargain and sale deed from the State of Oregon and, therefore, he thought that they ought to give a bargain and sale deed?

A. Well, as I remember it, I didn't hear Mr. Winans' testimony, but Mr. Winans, I think, received

(Testimony of Vawter Parker.)

the deed from a man by the name of Macrum or Macum, something like that.

Q. That is right, Macrum. Was that a bargain and sale? [934]

A. That is right, he didn't get a warranty deed, but the State gave Mr. Macrum what he referred to as a bargain and sale deed. I don't remember what Macrum gave Winans.

Mr. Buell: I think it is referred to in the statement——

The Witness: I have seen the deed but I don't remember.

Q. (By Mr. Jaureguy): In determining the type of deed that you were to draw, did Mr. Winans call attention to the types of deeds that had preceded him?

A. I don't know whether he called attention to them, but I had seen them. I think I had him bring in the papers.

Q. Oh, yes, he had a warranty deed from Macrum, from the State of Oregon, they call it a grant deed, which is a fancy name for a bargain and sale, I think, but was the matter discussed with you and Mr. Winans whether or not it would not be more appropriate to give a warranty deed subject to this exception?

A. I can't tell you who started the discussion that we would use a bargain and sale deed. That is the kind we used finally and we even changed that.

(Testimony of Vawter Parker.)

Q. Yes.

A. The first draft or so of it. I think we used the straight, which you use ordinarily in your office, bargain and sale deed. Then we amended it by putting in the clause subject—to change it all—“Subject to the right, title and interest in and to the property.”

Q. But the point I am asking is whether you can recall whether [935] or not there was any suggestion made by you or by Mr. Winans or by anybody else that the appropriate deed should be a warranty deed subject to the claims of the United States in the 40-acre tract?

A. I don't remember any discussion about using that type because we worked, stayed on a bargain and sale deed.

Q. Now while you were engaged in these matters that you have been telling about, did you have any consideration in your own mind to whether or not the purchasers were getting title insurance?

A. Some time before the transaction was closed, I began to feel that they were getting some advice somewhere due to the fact that Mr. Stegmann disappeared with a copy of this deed or he would have to go out every so often, I thought undoubtedly to talk to somebody.

Q. Well, the question I put to you is whether or not in your own mind you came to the conclusion that they were getting title insurance?

A. Some time during the middle of the day, I began to feel sure that they were checking either

(Testimony of Vawter Parker.)

with title insurance, or that maybe by abstract or with some lawyer or something on this property.

Q. When you suggested your going over to look at the title company's plat, didn't you really have in your mind, well, these people are probably getting title insurance over there anyhow [936] and so that they ought to be sure that the description is correct?

A. I don't know whether I had that in mind then, but after he had objected so strongly to my contacting the Title and Trust Company, I thought there must be—maybe they were doing something that they didn't want outside people to know that they were picking this property up. That sometimes happens.

Q. They would want to keep it secret for fear somebody else might muscle in and get it away from them?

A. By working on it or something else.

Q. That happens sometimes.

A. That is right.

Q. Did Mr. Winans ever tell you that he had had title insurance on this property?

A. Some time during this sale transaction I found out that Mr. Winans had once before had title insurance on this property.

Q. Where did you find that from?

A. Well, I presume that Mr. Winans told me. Now, it may not have been Mr. Winans. It may have been my partner, John Baker. I can't remember who first told me about it.

(Testimony of Vawter Parker.)

Q. Could it have been John Moore?

A. No, I don't think John Moore told me about it.

Q. You do not think John Moore told you about it?

A. I don't think I had any discussion with John Moore concerning this property prior to its coming out in the paper about the sale. [937]

Q. You did not call the title company and ask them about either whether Winans had had a policy or whether they had written a title report on that property?

A. Did I call the Title and Trust Company?

Q. Yes, I said did you call them?

A. No, I didn't call them. Now, I think that they—either before or after the deed was transferred on Monday I happened to be down in the Title and Trust Company.

Q. Tuesday morning?

A. Tuesday morning, that is right. I happened to be down in the Title and Trust Company, and I mentioned to Ed Miller, who is the title manager, that I was going to—had almost checked with him. I asked him if he had a plat of Lost Lake, of that township up there, and he said, "Yes." And I says, I told him I was going to check with him on it. He said yes, and I said well, I was interested in some property around it or something. He then told me something about—I told him the trouble I had had drawing a description on it, and he said, "Well, we insured it anyway." I said, "You insured that

(Testimony of Vawter Parker.)

land?" He said, "Yes." And, as I remember it, he told me yes, and I thought that was rather a strange thing, but I didn't say anything more and I dropped the subject. It wasn't an hour until probably I had discussed it with him again.

Q. I didn't get that last statement.

A. It was not probably an hour or so until after all this stuff [938] came out, and I talked it over with him again.

Q. What do you mean, "all this stuff."

A. Well, that this property had been transferred and the deed of record. It was to cause quite a bit of discussion around town.

Q. You mean when the Government——

A. That the Government put in a claim of it.

Q. But this first conversation you had, you say, was Tuesday morning?

A. I think it was Tuesday morning.

Q. Before lunch? A. Yes.

Q. You did not know the deed had been recorded then, I don't suppose?

A. I don't suppose so.

The Court: Had the deed been recorded at that time?

The Witness: Whether the deed had been recorded is a thing that I can't remember.

The Court: Had you received the \$95,000 check?

The Witness: Well, I have tried to remember back whether I did talk to him that morning as I was going to work—his office was in the same build-

(Testimony of Vawter Parker.)

ing as our office is—or whether I talked to him after the deed had been recorded.

Q. (By Mr. Jaureguy): You mean it was delivered to Mr. Abraham? [939]

A. That is right.

Q. You do not know whether you talked to Mr. Miller before you had your meeting with Mr. Abraham or whether you talked with him after that meeting with Mr. Abraham?

A. That is right.

Q. At any rate, when you talked to him about it, why, he recognized the property, the particular property?

A. Well, I had trouble drawing the meander line along this lake.

The Court: Why were you interested in that meander line at that time if you had already transferred the deed?

The Witness: Well, it was just a general discussion I had with them there.

The Court: This was just merely an academic discussion, curiosity?

The Witness: I was just down there, happened to be discussing, I didn't know that they had insured it until he told me, and when he told me this I thought, "Well, what happens here?" But I didn't say anything more then. I dropped the subject with him.

Q. (By Mr. Jaureguy): I suppose you are like I am; you do not draw descriptions of meander lines around lakes every day.

A. No, very few meander lines, and that was one

(Testimony of Vawter Parker.)

of the things particularly on Saturday before they got into it on Monday that they had had so much trouble with, was taking this exception out along this meander line. [940]

Q. You could not tell us what your best recollection is, whether you told him that before you had your meeting with Abraham or after?

A. No, sir, because I have tried to think several, quite a few times since then when I talked to him about it.

Mr. Jaureguy: That is all.

The Court: Mr. Ryan?

Cross-Examination

By Mr. Ryan:

Q. This conversation, was it on Saturday or Monday that the suggestion was made that you go over to the Title and Trust Company to look at the plat? A. When I made the suggestion?

Q. Yes.

A. As I remember it, I believe that was on Monday that I wanted to go to the Title and Trust Company and look at the plat.

Q. Could it have been Mr. Stegmann said at that time that the reason you should go to the City Engineer's is because it is probably an engineering problem and you needed his equipment to do that work?

A. No, because you had an engineer's problem and they worked with the City Engineer on Satur-

(Testimony of Vawter Parker.)

day. Now, if Mr. Haines worked there on Monday morning next——

Q. The County Engineer is what I was——

A. No, it was the City Engineer, I mean, that is where they [941] worked. I don't know——

Q. They worked there on Saturdays, you say?

A. In the City Engineer's?

Q. In the City Engineer's. Now, Mr. Haines was not present on Monday, to your recollection?

A. I don't remember Mr. Haines being present at all on Monday.

Q. Although there was still a problem of working out the description on Monday?

A. The main problem of description on Monday was the excepted piece of property that was coming out.

Q. That was always the problem?

A. Of the additional excepted property plus the fact that, well, it just seemed so many times we would get a description which seemed perfectly all right to me which did not meet with Mr. Stegmann's approval, and we would work it over again.

Q. You did go over to the Engineer's office at least one time when Mr. Haines and Mr. Stegmann were there?

A. I went over. At one time, I think it was on a Saturday, I am pretty sure it was Saturday, Mr. Haines was over there, and, I think Mr. Stegmann was there or went with me. Maybe he went with me over there. I remember being over there at the City Engineer's office.

(Testimony of Vawter Parker.)

Q. Were they using their facilities over there?

A. They were using their facilities there. Now, their facilities there were not maps of Lost Lake. They were maps—they just [942] had drafting boards there that they could work on and I suppose one of these things that you can compute angles on and get them drawn on the map so they reflect a true angle on a map.

Q. They were using those?

A. Well, they had them laying there. I suppose they would use them.

Q. Now, at this time the discussion you referred to that took place between Mr. Winans and Mr. Stegmann regarding some problem in the title, that took place in your office?

A. The discussion between Mr. Winans and Mr. Stegmann as to the defect of title took place in our office there, first on Saturday, and then it was again discussed on Monday.

Q. Who was present on Saturday?

A. Who was present on Saturday? Mr. Winans, Mr. Stegmann, and part of the time when, while we were discussing the title, I believe Mr. Haines was in there.

Q. Now, this office that you are describing, it is a fairly large room; is that correct?

A. That is correct.

Q. How big is your office?

A. Oh, fourteen by sixteen, I imagine.

Q. Were Mr. Haines and Mr. Stegmann on

(Testimony of Vawter Parker.)

Saturday working together on this description, or was Mr. Winans assisting them?

A. They seemed to have all been on a survey, and they seemed to all work on a description, but Mr. Haines was trying to take out [943] the first excepted portion and come around on this meander line because they had, instead of following the lake, just say following the meander line of the lake, they came around so many feet and so many chains, whatever they used, and so many degrees each time.

Q. During the course of this work there in the office, were the parties in separate groups working on this, Mr. Stegmann and Mr. Haines working together with Mr. Winans, and Mr. Stegmann and Mr. Haines working with Mr. Winans and you discussing the matter?

A. No, there was only one desk there. There was a table over in the corner, but they were all, they would all be sitting around the table there if they were going to be discussing any matter, but the table was not large enough—I think they had a rather large map, as I remember—for they wanted to work and figure out this excepted portion on this, following this meander line around the lake.

Q. This conversation arising regarding Exhibit 311 that you saw here—that is the paper purportedly written out by Mr. Winans which you did not write out? , A. Yes.

Q. That took place on Monday or on Saturday?

A. As I remember it, I believe that took place on Monday.

(Testimony of Vawter Parker.)

Q. You explained to Mr. Stegmann that it was not necessary that he sign it because it was a change in the deed?

A. I was talking merely to Mr. Winans then because Mr. Winans [944] had asked Mr. Stegmann to sign it, or I had asked for him, I don't know which, but it was presented there, and my explanation of why it was not necessary after Mr. Stegmann refused was directed to Mr. Winans.

Q. At the time Mr. Abraham called you up on Saturday night—Monday night, rather—saying that he was interested in this deal, did you tell him anything about the possibility of a defect in title?

A. I don't believe so at that particular time.

Q. So your first recollection of the matter being brought up was at the time that Mr. Winans spoke to Mr. Abraham, as he testified here previously?

A. Yes, when Mr. Winans spoke to Mr. Abraham in our office the next morning was the first time that I had heard it discussed with Mr. Abraham, or I had discussed it.

Q. You say you were under the impression that Mrs. Parker was backing Stegmann?

A. I don't know as anything directly was made to give me the impression, but that is the feeling I had that it was either backing Mr. Stegmann or was representing someone who was backing Mr. Stegmann.

Q. You made no representation to her of any of your knowledge of that fact, did you?

(Testimony of Vawter Parker.)

A. I don't remember that I did. I think the only discussion that we had with her that morning was about the property and what [945] a nice property it was, and whether we discussed what it was to be used for I don't know.

Mr. Ryan: That is all the questions I have.

The Court: Mr. Krause?

Cross-Examination

By Mr. Krause:

Q. Mr. Parker, you had before you at the time you drew this deed that was finally signed certain instruments, didn't you? A. Yes.

Q. Like the option?

A. The option which Mr. Winans had given to Mr. Stegmann. I think that was in the office.

Q. And the copy from which you worked was a signed copy, one signed by Winans and Ethel and also by Walter Stegmann; was it not?

A. Well, as I remember, I think they was all signed.

Q. Well, we already have a copy of an option in evidence, but here is one, a yellow copy of an option that has three signatures on it, and I think it has your initials on it, too. That is Exhibit 305. First of all, in the lower right-hand corner, are those your initials? A. Yes, they are.

Q. Is that the option from which you worked?

A. It is.

Q. Now, then, were you also given a copy of an Exercise of [946] Option?

(Testimony of Vawter Parker.)

A. There was another piece of paper which——

Q. Exhibit 307.

A. I don't believe it was quite this size, which Mr. Stegmann had given saying that he was going to exercise the option.

Q. Well, look at 307 there and see whether that is the instrument that you also used in the preparation of this deed? A. Yes.

Q. Now, did you, down through the time that you finally delivered the deed and received the money from Mr. Abraham, have anyone in your presence at any time say that anybody other than Stegmann was doing the buying? A. No.

Q. No one ever suggested that there was anybody other than Stegmann?

A. No, the only suggestion that anybody was even interested was this lady that Mr. Abraham said had given him the \$95,000 check.

Q. You thought she had some interest in the matter?

A. That was confirmed that morning when she came in.

Q. You didn't say or complete telling us just what happened when she left your office by your private door on that Tuesday morning. What was the apparent reason for her leaving at that time?

Mr. Jaureguy: I want to object to that as calling for a conclusion of the witness. [947]

Mr. Krause: All right, tell us just what occurred immediately before Mrs. Parker left your office?

(Testimony of Vawter Parker.)

A. Well, we were there and we waited for Mr. Winans to come in.

Q. Now, "we" is Mr. Abraham and yourself?

A. Mr. Abraham, Mrs. Parker and myself.

Q. That is right.

A. Were in there waiting for Mr. Winans, and when Mr. Winans came up the stairs and came into the outer office, I think I announced to—said that that was Mr. Winans now, and Mrs. Parker excused herself and went out the side door and down—well, she went out the door. I don't know where she went from there.

Q. This door from your office led into the hallway in the building?

A. Into a hallway, not out into a waiting room. Mr. Winans came in through the waiting room.

Q. The last form of deed that you gave Mr. Stegmann a copy of was the one that was also finally executed; is that correct?

A. I am pretty sure that that is the one. The one he took out of the office the last time was the one in which we inserted the—I mean which we had kept and delivered after it was signed to Mr. Abraham.

Q. This deed, of course, copy of which you had given to Stegmann and he carried away, was one that had been prepared right there in your office?

A. Yes. [948]

Q. Had Mr. Stegmann indicated whether that deed was satisfactory or not satisfactory?

(Testimony of Vawter Parker.)

Mr. Jaureguy: I am going to object to that as not in any way binding on the Parkers.

The Court: All right. Go ahead.

Mr. Krause: Well, except if Mr. Stegmann is there, I——

The Court: He knows my rulings.

Mr. Jaureguy: Yes, I know, and with exceptions.

The Witness: The copy which I gave to Mr. Stegmann and he left the office with on Monday afternoon apparently was satisfactory with Mr. Stegmann; however, he stated, he wanted to know if he could have a copy of that and he took a copy and he left the office. I presumed he was coming back as he had done several times before, and I don't believe he came back.

Q. He made no suggestion of any further change? A. No.

Q. And the original of that copy you gave him was the one that Ethel signed and that you delivered to Mr. Abraham the next morning? A. Yes.

Mr. Krause: I think that is all.

Redirect Examination

By Mr. Buell:

Q. Mr. Parker, Mr. Jaureguy asked you if you overheard or if you heard what Paul Winans told Mr. Abraham about the defects in [949] the title, but I don't think it was brought out whether you heard what Mr. Abraham said to Mr. Winans after Mr. Winans had made his explanation. Do you remember what Mr. Abraham said?

(Testimony of Vawter Parker.)

A. There was some discussion there. The only one thing that I happen to remember that Mr. Abraham said to him was that he didn't believe that these people, which I think were the words he used, were interested in advice from anybody here or in Hood River.

Q. During the time that Mrs. Parker was there in your office with Mr. Abraham, did she say anything, or did you hear her say anything, about what use the property was going to be put to?

Mr. Jaureguy: I object to that as not proper re-direct. He has gone over all this before.

Mr. Buell: If that is true, I am sorry.

The Court: I am going to let him answer the question. I am interested in that question myself. Go ahead.

The Witness: There was some discussion about the property and I got the impression from what was said—I can't remember the words—that it was still a resort property, or something of that nature, which either Mr. Stegmann or his son was interested in. Whether we discussed his son, I don't know, that morning, but he had mentioned his son the day before.

Mr. Buell: I have no further questions.

Mr. Jaureguy: I have one or two, your [950] Honor.

(Testimony of Vawter Parker.)

Recross-Examination

By Mr. Jaureguy:

Q. When you went over to the Title and Trust Company on Tuesday and they told you they were insuring it, did you mention to them this alleged defect or claim of defect that you had heard about?

A. At that time on that morning, the only question I asked him, I asked him, "Did you insure that back piece?"

Q. Yes.

A. And he said, I believe he told me they had. I don't know what words he used on it. I don't remember whether we had any more discussion at that time. I did right afterwards, after the question came up about the United States Forest Service claiming part of it.

Q. Yes, but you asked him whether they, that is, you distinguished the back forty from the Lot 1 and asked him whether they insured the back forty?

A. I asked him, "Did you insure the back forty?" I remember that because it surprised him at the time.

Q. Then you did separate the number, anyhow?

A. I don't know whether I did or not. I just asked about that.

Q. Did you indicate to him that there was some kind of a—you had heard about some kind of a defect in the back forty?

(Testimony of Vawter Parker.)

A. I don't think I discussed it any further with him.

Q. I want to show you here Exhibit 303—I think that is the number—and ask you whether you have ever seen that before? [951]

A. I don't know whether I saw this, but I saw a map or a sketch with which they figured it up, using these lines back from there.

Q. You are referring to the horizontal lines up at the north part?

A. The lines running east and west.

Q. East and west?

A. Yes, east and west, I believe, right here (indicating). Whether they had this one or some other map which they had—because I wondered about this and the description and why they had to have it.

Q. The witness has been pointing to lines starting at the meander corner at the northeast corner and proceeding thence westerly; that is correct, isn't it? A. Yes.

Q. I am just asking if that is what you were pointing at? A. Yes.

Q. Do you know—now, this might possibly refresh your memory, these figures down at the left margin which is down below, “8.346 a,” does that refresh your memory as to whether you have seen this identical piece of paper before?

A. I can't remember seeing these figures on here. Let me see.

The Court: Any further questions?

Mr. Jaureguy: I think he is just trying to see

(Testimony of Vawter Parker.)

if there is anything further on there, but there will be no further questions unless his answer calls for them. [952]

The Witness: What I was trying to explain to you a while ago here was on the original exception in the southeast—which I believe this is the southwest corner. I may be wrong, but on the original description, the southwest corner of Lot 1, I believe I called it southeast.

Mr. Jaureguy: I think so, too.

A. Then when they changed it and they took in additional land they moved, it would have been north along that line.

Q. But, I take it, you are not now able to say whether you have ever seen this exhibit before?

A. I have seen a map like that, but I won't say that is the Exhibit.

Q. You mean a map like it, you mean that it has the same markings, except it may be on a different piece of paper?

A. No, what makes me remember it is the edge of the lake plus the east and west lines around here (indicating).

Q. Up on your northerly part, you are talking about? A. That is right.

Mr. Jaureguy: That is all.

The Court: That is all, Mr. Parker.

(Witness excused.)

The Court: We will take a 10-minute recess.

(Recess taken.) [953]

KENNETH ABRAHAM

recalled, testified as follows:

Cross-Examination

By Mr. Krause:

Q. While we are still on this matter, your Honor, could I offer in evidence this Exhibit Mr. Parker identified? It is 305. That is the option from which Mr. Parker was working in drawing the deed.

The Court: It may be admitted.

(Whereupon, the document previously marked Defendant Winans' Exhibit 305 for identification was received in evidence.)

Examination by the Court

Q. Mr. Abraham, I do not know whether the record discloses the precise time at which you had your conversation with Mrs. Parker relative to the information which you received from Mr. Winans. Was that before the name, Chet L. Parker, was written into the deed and before the revenue stamps were affixed to the deed, or was it after that time?

A. As I recollect it, your Honor, it was just as soon as I came back from the Court House. It would be before I put the names on the—the grantee's name on the deed and put the revenue stamps on it.

The Court: That is all. [954]

Cross-Examination

By Mr. Jaureguy:

Q. Well, as a matter of fact, was it not after you left the Court House and got back to your office?

(Testimony of Kenneth Abraham.)

A. No, I don't think I went back. I don't believe I went back to my office with Mrs. Parker. I might have.

Q. She paid you, I guess, for your services, and you wrote her a receipt, and you got that receipt in your office, and that was when you told her that; is that not correct?

A. No, I believe I told it to her when I put the name on the deed before I put the revenue stamps on, when I came back into the Court House I think was the first thing I said to her.

Q. After you got through at the Court House did you go back to your office with her?

A. I cannot recall whether I did or not. I might have. I cannot recall that.

Q. But, as I understand it, your recollection is very vague about whether you even told her that at all?

A. My recollection is vague about whether I told her that at all, but I did check back into the notes that Mr. Lindsay made when he interviewed me in October, and when Mr. Buell interviewed me to the effect that I had said that, that I had told her about the defect.

Q. Yes, but if your recollection is very vague as to whether you told her at all, why then, I can understand where you probably [955] must be vague as to when and where you told her.

A. That could possibly be true, but I think I must have told it to her before I came into the Court House.

(Testimony of Kenneth Abraham.)

Q. Are you not really being influenced by what you think you must have done rather than what you really did do? A. That may very well be true.

Mr. Jaureguy: That is all.

Mr. Buell: That is all.

The Court: That is all.

(Witness excused.) [956]

BERT HOLTBY

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Your name is Bert Holtby, and you reside at Parkdale, Oregon; is that right?

A. That is right.

Q. What is your position?

A. District Ranger, Hood River District.

Q. Is that in the United States Forest Service?

A. That is right.

Q. Is there any particular name of the district other than just Hood River District?

A. That is the official title. It is sometimes called Parkdale District.

Q. Now, within your district is located the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 16, which is involved in this Winans, Parker lawsuit; is it not?

A. That is right. It is 1 South, 8 East, I believe.

Q. How long have you had your present position

(Testimony of Bert Holtby.)

as District Ranger?

A. At Parkdale?

Q. Yes.

A. I was transferred to Parkdale effective April 1, 1951. [957]

Q. Have you ever had any conversation with Paul Winans relative to a possible exchange of the— with the Forest Service of the Lost Lake property which the Winans claimed to own?

A. Yes, shortly after I arrived on the District, Mr. Winans called and indicated in the telephone conversation that he would like to confer with me in regards to a possible exchange in the Lost Lake area, and I told him that I was not familiar with the file and I would get in touch with him later after I had reviewed the case and had gotten some information on it, and we left it that way.

Q. Did you ever hear from him again?

A. No, I don't believe we ever—I don't believe we talked about it either personally or by phone again.

The Court: You came to that office in 1951; is that correct?

The Witness: I was transferred to Parkdale April 1, 1951.

Q. (By Mr. Buell): Mr. Holtby, approximately how many acres of Forest Service land is there within your jurisdiction?

A. There is a hundred thousand acres in the Hood River District.

Q. Do you have a number of deputies or other

(Testimony of Bert Holtby.)

Forest Service personnel working under you in connection with your duties? A. Yes, we do.

Q. How many year-around personnel do you have?

A. We have about ten at the present time. It varies from time to time due to transfers.

Q. During the summer, are there additional personnel? [958]

A. Yes, we have from 10 to 15 temporary employees in the summer in addition to our regular employees.

Q. Now, would you tell us, please, what your duties are with respect to closing the forest under your supervision to entry by the public at various times of the year?

A. Well, the main closure that we are concerned with is the fire season closure, and whenever the fire season gets to the hazardous point that we feel it is necessary to have a closure, we recommend to the supervisor that one of several types of closures be put into effect. Generally, under our Federal laws, Federal regulations I should say, those closures are put into effect on National Forest land. In the Hood River valley, because of the fact that we are involved in a State protective area, it is sometimes a little more difficult to obtain a closure, and it is necessary to go through the Governor to get the State closure, but, in effect, we have the same thing. We have either a permit or an absolute closure on the area.

Q. With respect to the Forest Service lands within your district, you do not have to go to the

(Testimony of Bert Holtby.)

Governor to obtain a permit to close them to the public, do you?

A. We would not have to, no.

Q. You mentioned absolute closure. Is there any other kind of a closure that——

A. Yes, the common one is a permit closure where we allow people to enter the area for their regular work, such as loggers or [959] people that reside in the area.

Q. How do they get a permit? Where do they go to get a permit to enter the area?

The Court: What difference does it make? What is the relevancy of all this testimony? Why don't you get to the point?

Mr. Buell: I believe we are entitled——

The Court: You are not entitled at 5:15. I held this court open for you so you could put on this one witness. If we are going to stay here until six o'clock, we ought to know about it. You said you would dispose of this witness in fifteen minutes.

Mr. Buell: I think he has only been on the stand a couple minutes, your Honor.

The Court: At the end of fifteen minutes, we are going to close.

Q. (By Mr. Buell): Where do they go to get a permit to enter the area, Mr. Holtby?

A. It is set up in the permit closure. It would probably be the Parkdale Ranger Station.

Q. Now, since the time of the Winans' sale, have you caused or had any additional Mt. Hood or Bull Run Timber Reserve Forest signs to be posted along

(Testimony of Bert Holthy.)

the boundary of the 40-acre tract to which the Government claims title in this case?

A. No, I have not.

Mr. Buell: No further questions. [960]

Cross-Examination

By Mr. Jaureguy:

Q. Well, do I understand that whether you need it or not you go to the Governor to get a closure of the Government's forest lands?

A. No, that is not right. That is not what I said.

Q. You said you would not have to go to the Governor for a permit?

A. No, we do not necessarily have to. Sometimes we find it more convenient, and it works better because of the State protective area.

I only deal with the National Forest protective area, and the State attends to the——

Q. But, ordinarily, if you had a closure of national lands, you also have a closure of adjacent State lands, don't you?

A. Quite often, because we go through State lands to get into National Forest lands.

Q. So that both of them generally are closed at the same time?

A. Generally true.

Mr. Jaureguy: That is all.

Mr. Ryan: No questions.

Mr. Krause: No questions.

(Witness excused.)

The Court: We will recess until tomorrow morning at nine-fifteen.

(Evening recess taken.) [961]

(Wednesday, February 4, 1953, the trial was resumed at 9:15 a.m., and the following proceedings were had:)

RETLAW HAYNES

a witness produced in behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Buell:

Q. Mr. Haynes, would you tell the Court what your occupation is, please?

A. At the present time I am a structural engineer.

Q. Employed by whom?

A. Corps of Engineers, United States Army.

Q. That is here in Portland, is it?

A. Yes, sir.

Q. During the summer of 1951, did you have occasion to do any surveying on property adjacent to Lost Lake being sold by Mr. Paul Winans?

A. I did.

Q. Do you have any independent recollection of the dates on which you were on that property?

A. Well, the first time was on or about August 18, 1951.

Q. You were retained by Mr. Winans, were you, to do some work in connection with the property?

(Testimony of Retlaw Haynes.)

A. Yes. [962]

Q. What were you supposed to do?

A. Well, sir, I was supposed to establish the southwest corner of Lot 1, I believe, then run down the south boundary to where it intersected the lake, the north boundaries having been already established by the General Land Office.

Q. Now, on the occasion of your first trip to Lost Lake, was there anybody along with you?

A. Yes, I had an engineer with me by the name of Lawrence Bogar.

Q. Is he also employed by the Army Engineers?

A. Yes.

Q. Then where did you meet Mr. Winans first?

A. At Hood River.

Q. At his place or——

A. No, he came down to Hood River and escorted us up to the place at Dee.

Q. At Dee? A. Beg your pardon?

Q. At Dee?

A. Well, wherever his home is.

Q. Then when you went up on the property, who else was there along with you besides Mr. Bogar, Mr. Winans and yourself?

A. Well, there was Walter Stegmann, and he had another man along with him at that time. I don't just recall who it was, but I have been informed it was his brother, Ross Winans, and I believe [963] two other Winans nephews.

Q. You place that first trip to the property as on or about August 18th?

(Testimony of Retlaw Haynes.)

A. To the best of my recollection.

Q. Now, when you went up to the property, did you have any direct conversations with Mr. Stegmann, yourself, as to what the transaction was or as to what his interest in the transaction was?

A. No, I don't believe I did. That was not part of my job.

Q. Did you know or have any information as to whether or not there was any sale of the property coming up in the future?

A. Well, it is pretty hard to recall exactly, but I had the impression that the property was being sold.

Q. Then were up—or when was the next occasion that you were up on the property after you went up on or about the 18th?

A. I am quite sure it was the following week end, probably the 25th and 26th.

Q. Incidentally, on relating or going back to the first trip, were you there for just one day or more than one day? A. One day the first time.

Q. That was a Saturday, was it, or do you recall? A. I am sure it was a Saturday.

Q. Now, on the occasion of the second trip, did any other engineer go along with you? That would be the one on the following week, the 25th? [964]

A. Yes, I brought one of the engineers from the Army again to help me because Mr. Bogar could not be there.